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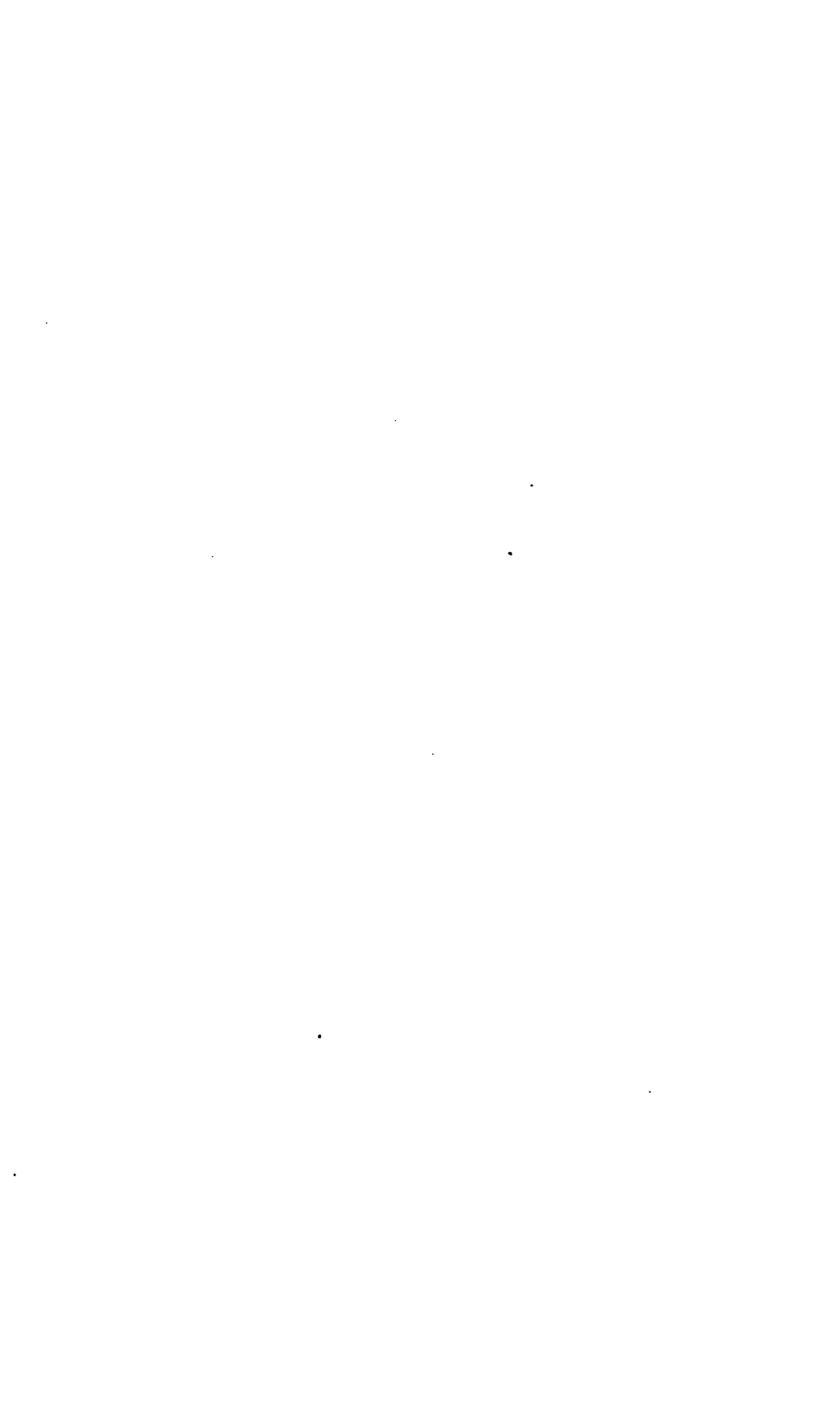


English & Hawaiian

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LEGAL OBSERVER,
Digest,

AND
JOURNAL OF JURISPRUDENCE.

PUBLISHED WEEKLY.

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INCLUSIVE.

—“Quod magis ad vos
Pertinet, et nescire malum est, agitamus.

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The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 3, 1849.  
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BUSINESS OF THE COURTS.— COMMENCEMENT OF MICHAELMAS TERM.—WINDING-UP ACTS.

MICHAELMAS Term, which is conveniently computed as the commencement of the legal year, opened yesterday, under circumstances not altogether unworthy of notice.

The learned and respected head of the profession—the Lord Chancellor—after a severe and protracted illness, which prevented the public discharge of his functions for some months antecedent to the long Vacation, again appeared with re-established health, and after receiving the judges and the leaders of the Bar at his private residence, according to ancient custom, headed the procession to Westminster Hall, and presided in the Court of Chancery there. We understand, however, that in conformity with the express desire of a large majority of the Bar, as well as of the Solicitors, Lord Cottenham has intimated his intention to hold the sitting of the Court of Chancery, during the remainder of the Term, and indeed until the meeting of Parliament, at Lincoln's Inn, and not at Westminster Hall, an arrangement, we need not say, which is most convenient and cannot fail to afford very general satisfaction to all branches of the profession.

The continued illness of the dignified and honoured chief of the Court of Queen's Bench,—not, we are happy to announce, of that serious character which some of our contemporaries have been given to understand,—but which, nevertheless, renders it inadvisable for Lord Denman immediately to resume the laborious duties devolving upon the head of the first of the Common Law Courts—was the subject of universal concern in the Courts, and it may be supposed, was more peculiarly noticed in that Court where his lordship has so long and

ably presided, and where we hope soon again to see him.

In the Court of Common Pleas, the sudden and lamented death of Sir Thomas Coltman, (which took place on the 11th July last,) under circumstances well enough calculated to make us feel “what shadows we are and what shadows we pursue,” was remembered with pain by those with whom this learned judge had so long associated, as well as by that more extended professional circle to whom an opportunity was necessarily afforded of estimating, and who fully appreciated, his manliness and worth. In this Court also, the numerous friends and admirers of Mr. Serjeant Talfourd congregated, desirous of seeing the learned judge take his place for the first time on the Bench, as an occurrence which could not fail to be a subject hereafter of grateful remembrance. The customary congratulations which his lordship received from his brother judges, were responded to by those of the profession who crowded the Court, with a heartiness and sincerity, which the regulations of etiquette hardly prevented from finding an audible expression. The kindly and unaffected urbanity of disposition, and the rich and rare endowments of mind, which have so long distinguished him, and made it no exaggerated panegyric to say, that Serjeant Talfourd was “the delight of every circle and the idol of his own,” render his advancement to the Bench a source of gratification in which the educated public fully participate with the legal profession.

As to the prospects of business, we have nothing very encouraging to communicate, but it must be remembered, that these are “early days,” and that Michaelmas Term is customarily remarkable for its dulness. The arrears of business in the Courts of Equity, notwithstanding the absence of the Chancellor, cannot be considered extensive,

and the number of cases waiting for hearing in the Common Law Courts during Term are unusually small, although, as we have had occasion to remark, there is a considerable *nisi prius* arrear for the sittings after Term, especially in the Courts of Queen's Bench and of Exchequer.

As usual at the commencement of the Term immediately succeeding after the Circuits, the Courts of Law may be expected for some days to be almost exclusively occupied in hearing applications for new trials, a branch of Court business upon which we do not regret to see great care and attention bestowed, as their application at this stage invariably produces a great saving of public time, and prevents much hardship and injustice to suitors hereafter.

Whatever deficiency of business there may be in the Courts, the offices of the Masters of the Courts of Equity promise to be fully occupied under the provisions of the Joint-Stock Companies' Winding-up Acts. During the progress of the measure of last Session, (12 & 13 Vict. c. 108,) for amending the Joint-Stock Companies' Act of 1848, our readers were put in possession of the scope and object of its provisions^a in the shape it was originally introduced into the House of Commons by the Solicitor-General; and an early opportunity was taken after the royal assent was obtained to print the act itself without abridgment, in our columns.^a

The question raised at the outset, and upon which the Lord Chancellor and one of the Vice-Chancellors differed in opinion very soon after the Act of 1848 (11 & 12 Vict. c. 45,) came into operation, namely, to what description of companies the winding-up provisions were applicable, is intended to be settled by legislative declaration in the more recent act, and it will be observed that "railway companies incorporated by act of parliament," apparently contrary to the original intention of the framers of the bill, are now expressly excluded from the operation of the act 11 & 12 Vict. c. 45.^b Companies formed for the working of mines on the principle commonly called "the cost-book principle," within the jurisdiction of the Stannaries' Court, are also exempted from the operation of the Winding-up Act, unless the owners of one-tenth in value of the shares appearing on the "cost-book," petition for winding up. With these exceptions, the Winding-up

Acts are to be applicable "to all partnerships, associations, and companies, whereof the partners or associates are not less than seven in number, whether incorporated or unincorporated, and whether formed and subsisting before or after the passing of the act of 1848."

We copy from the daily newspapers a paragraph purporting to give a list of the various schemes now in progress of winding up, under the act of 1848, but we have reason to know that the list is imperfect and may be considerably extended:

"The Banwell Iron Company, Agricultural Cattle Insurance Company, Marylebone Bank, Wesleyan Newspaper Association, British and American Steam Navigation Company, Compressed Air Engine Company, German Mining Comp., Godolphin Mining Comp., India and Australia Steam Mail Packet Comp., Tontine Life Assurance Isle of Wight Joint-Stock Comp., Liverpool and Manchester Saw-Mills, London and Westminster Coal Club, Margate Steam Packet Comp., London and Westminster Life Insurance, Merionethshire Slate Comp., Nister Dale Iron Company, Hilbricken Silver-Lead Mining Company, North of England Joint-Stock Banking Company, Patent Kamptulicon Company, Rio Doce Company, Royal Thames Steam Navigation Company, St. George's Steam Packet Company, Sheffield and Retford Banking Company, Southampton Emigration Company, Universal Salvage Company, Vale of Neath and South Wales Brewery Company, Wheal Curtis Mining Company, Wheal Loyal Mining Company, York and London Assurance Company, making a total of thirty-one companies, of which, four are insurance companies, four banking companies, six mining companies, and five steam navigation companies."

The Master in Chancery unites the functions of a judge and jury, together with the equitable jurisdiction of the Court of which he is an officer, in administering the law under the Winding-up Acts, and the multitude, diversity, and importance of the questions discussed before and decided by him, may be imagined from the nicety and complexity of the schemes in reference to which this novel jurisdiction is put into motion. That there is nothing either in the regulations of the Courts of Equity, or in the state of business in those Courts, to prevent the speedy and final adjustment of all questions submitted to the Master under the Winding-up Act, is tolerably clear from what we find stated on this subject by Master Farrer, in his evidence before the Lords' Committee on the Bankruptcy Bill in March last. We copy the whole paragraph:—

"Will your lordship allow me to say, that

^a Legal Observer, vol. 38, p. 137.

^b 12 & 13 Vict. c. 108, s. 1; Legal Observer, vol. 38, p. 340.

we have in the Court of Chancery in England, at the present moment, the jurisdiction both of law and equity under the Joint-Stock Companies' Winding-up Act, 1848. The Master in Chancery is sitting, (*quasi*) a *nisi prius* judge, and he is sitting (*quasi*) a judge in equity, an equitable judge; he summons and examines parties as well as witnesses; he is judge and jury in a very short time; and he is, if I may say so, Chancellor. An action at law or suit in equity is heard and decided by him, and carried by appeal to the Vice-Chancellor, or Lord Chancellor. The following is the first case that came before the Master: Thomas Reveley's case. The admissions were entered into and affidavits were made between the 30th Nov. 1848, and the 4th Dec. 1848; on the 4th it was argued by counsel; on the 8th Dec. the Master gave out his decision; on appeal to the Vice-Chancellor he gave judgment on 21st December, and on appeal to the Lord Chancellor he gave judgment on the 11th Jan. 1849."

The proceedings in this case were rapid enough to satisfy the most determined advocate of speedy justice! May we be pardoned for hoping that the celerity with which the car of justice was driven in the case alluded to by the Master, was not attended with danger? We have already heard loud and repeated complaints, that orders have been made against parties as contributories to abortive schemes, who had no personal notice that their liability was alleged, or meant to be insisted upon, the order proceeding upon the ground that notice had been left at the place where the alleged contributory was supposed to reside at the time of his alleged connexion with the defunct company. We have also heard it stated, that parties were held to be concluded, by such orders, made in their absence, because they had not given notice of an intention to resist within a limited period, when in point of fact the knowledge that it was contemplated to render such parties liable, was acquired at too late a period to leave it possible that any opposition could be made to the order, whatever might have been the merits of the case. If such instances have occurred, we apprehend their recurrence may be prevented, by the exercise of the extended power now given to the Chancellor, under the 12 & 13 Vict. c. 108, s. 37, to make, and from time to time alter, vary, and discharge, such rules and orders as seem necessary or expedient for carrying into effect the purposes of the Winding-up Act. Be this as it may, it must be admitted, that the experiment now in course of trial in the Masters' Offices, is one of the deepest interest and importance, as well to the profession as to the public.

ANSWER TO LORD BROUGHAM'S LETTER.

WE hasten to redeem the promise given in a former number, to present to our readers some extracts from the searching and successful examination which "A Practical Man" has applied to the pamphlet published by Lord Brougham, in the form of a Letter addressed to Sir James Graham, "On the Making and Digesting of the Law." The self-satisfied complacency with which his Lordship directed the shafts of his ridicule against blunders, which are shown to have originated in the bill he himself takes credit for concocting, and which, he assumes, was all but perfect, is mildly and temperately reproved in the pamphlet before us, and the want of candour and fairness exhibited by his Lordship in criticising the Commons' Committee, in respect of the Bankruptcy Digest, is clearly exposed.

The "Practical Man" is evidently well-informed upon the subject of Parliamentary Practice, and not altogether unacquainted with what passed in the Select Committee on the Bankruptcy Bill. Lord Brougham's complaint, that the Commons' Committee objected to the form of the Digest, framed under his direction, because it was in articles and not in sections, is thus answered, and the ground of preference satisfactorily explained:—

"Truly, the Commons did object to the form of the Digest; but it is unfair to represent their objections to lie between a question of *Articles* and *Sections*. The Bill as brought from the Lords consisted of six enactments, contained in less than three pages, a Schedule occupying 113 pages, and 28 Appendices. The Schedule was preceded by an Analysis, and was divided into 367 Articles, arranged into Chapters and Sections of Chapters, and at various parts were to be found certain Headings and Summaries of Contents; and one of the aforesaid six enactments declared that this Schedule and Chapters, the Analysis, Sections of Chapters, Articles, and Appendices, should be deemed and taken to be enacted, as if the same had been expressly enacted in the usual forms. It was this extraordinary and wholesale departure from the recognized Parliamentary forms to which the Commons objected. They rejected altogether the Analysis, the Headings, and Summaries of Contents, because of the endless complication which they were calculated to produce; they converted the Schedules into Enactments in order to render the Bill capable of discussion; and they preferred Schedules to Appendices, because there were precedents for the former and none for the latter. We have stated that the conversion of the Schedules into Enactments was in order to render the Bill





2. These orders as to all suits, matters, and proceedings now pending or hereafter to be commenced, are (so far as the same are applicable to the state of such matters and proceedings) to take effect on the first day of January, 1849.

Official Attendance and Vacations.

3. In the office of the Petty Bag.

1. The office is to be open and closed on the same days—and,

2. The Vacations are to be observed at same time—and,

3. The clerk is to attend in the office during the same hours,

As are for the same purposes and in relation to the same matters appointed by the general rules of the Court of Chancery in the office of the Clerks of Records and Writs, subject nevertheless to such alterations as for some special reasons, may be at any time made by the Lord Chancellor, with the advice and assistance of the Master of the Rolls.

Clerk of the Petty Bag.

4. The Clerk of the Petty Bag is to have the care and custody of the Chancery Common Law Seal, and is to use and employ the same for sealing such several writs, and all such documents and writings as are by the said act authorized to be sealed with the same seal.

5. Affidavits, affirmations, and declarations to be used in any proceeding on the Common Law side of the Court are to be sworn, affirmed, or declared before the Clerk of the Petty Bag, or before a Master Extraordinary of the High Court of Chancery, and are to be filed in the office of the Petty Bag.

6. Every writ, rule, or document issued or delivered out of the Petty Bag Office is to be tested or dated on the day on which the writ is sealed, or the rule or other document is made.

7. Every writ returned by the sheriff is to be immediately filed, and thereupon the day and hour of the filing are to be endorsed on the writ.

8. The clerk of the Petty Bag upon receiving the return of the transcript of the verdict of the jury, and proceedings or judgment of any Court of Common Law upon any issue in law, or in fact, is to file the same in the Petty Bag Office, and is to cause an entry to be made of such verdict and proceedings or judgment, and such transcript is to be annexed to the original record in the Petty Bag Office, and thereupon the judgment of the Court of Chancery is to be entered on, or annexed to, the same record, in conformity with the judgment of the Court from which the transcript is returned.

Attorney.

9. Every solicitor, whose name is duly enrolled as such in the High Court of Chancery, may act as an attorney in any action, suit, matter, or proceeding pending on the Common Law side of the same Court, and is to be therein named and treated as the attorney of the party by whom he is retained.

10. Any party changing or ceasing to employ his attorney in the course of any action, suit, or proceeding, is to cause an entry of such change or cessation of employment to be made and entered with the Clerk of the Petty Bag, and to cause notice of such change or cessation of employment and of such entry to be served on every party to the action, suit, or proceeding, and until such entry and notice shall have been made and served, the former attorney is to be deemed and taken for all purposes of the action, suit, or proceeding, to be and remain the attorney of the party.*

Scire Facias.

13. The proceedings and trial in an action of *scire facias* may take place and be had in such one of her Majesty's Superior Courts of Common Law as may be chosen by the party applying to have the writ sealed.

14. A writ of *scire facias* to revoke letters patent is not to be sealed; 1, until the fiat of the Attorney-General is filed in the Petty Bag Office; 2, until the name of some one of her Majesty's Superior Courts of Common Law is indorsed or written thereon; 3, until a true copy of the writ and of any drawings or plans annexed thereto (to be verified by affidavit) has been filed in the Petty Bag Office.

15. If such writ has been sealed before the 1st day of January, 1849, and the record of the action has not been carried or transmitted into the Court of Queen's Bench, the name of some one of her Majesty's Superior Courts of Common Law, is to be indorsed on the writ, and a memorandum thereof entered with the clerk of the Petty Bag Office before any subsequent proceeding is taken in the action.

16. The trial and any proceedings in an action of *scire facias* are to take place in the Court of Common Law, the name of which is indorsed or written on the writ.

17. A bond of indemnity against costs, to be incurred in the prosecution of an action of *scire facias*, may, (if so desired by the Attorney-General,) be taken in the name of the clerk of the Petty Bag, but the same is not to be deposited or filed in the Office of the Petty Bag, unless the intended obligors, and the sums for which they are to give security, be named by the Attorney-General.

18. A bond of indemnity filed or deposited in the Petty Bag Office may, at the request of the Attorney-General, be put in suit under such circumstances, and upon such terms and conditions as the Lord Chancellor or the Master of the Rolls may approve of.

19. An appearance is to be entered by or on behalf of any defendant who has been summoned by the sheriff within eight days after the writ of *scire facias* has been returned and filed.

FEES.

The clerk of the Petty Bag is, until further order, to receive and take the several fees which

* Sections 11 & 12 are abrogated by order of 3rd August, 1849. See 38 L. O. p. 505.

are set forth in the schedule hereunder written, and is to account for the same and pay the amount thereof into the Suitors' Fee Fund, in the same manner, and at the same times as the clerks of Records and Writs receive, account for, and pay the fees received by them in their office.

THE SCHEDULE ABOVE REFERRED TO.

Fees to be received by the Clerk of the Petty Bag.

For filing every qualification of a member of parliament . . . £ s. d.
0 2 0

On every *dedimus protestatem* issued from the Crown Office to swear a justice of the peace . . . 0 2 6

On filing every affidavit of execution of articles of clerkship, entering affidavit, and making the endorsements required by the act of 6 & 7 Vict. c. 73 . . . 0 5 0

For striking every solicitor off the roll, either at his own request or otherwise . . . 0 7 6

For altering the name of every solicitor on the roll . . . 0 7 6

For every certificate of striking a solicitor off the roll, and for every other certificate not herein specifically mentioned . . . 0 2 6

For enrolling every surrender . . . 1 10 0

For the admission of every Master in Chancery . . . 1 12 6

For administering every oath and qualification in Court (except on admission of solicitors) . . . 2 2 0

For swearing any officer of the Court whose admission is enrolled in the Petty Bag Office (except solicitors) and inrolling the admission . . . 5 0 0

For attending with records or other documents in any Court or place (besides expenses to be retained by the officer to his own use) per diem . . . 2 2 0

For filing the returns to all special commissions, articles of the peace on a *supplicavit*, and commissions and writs of every kind returned and filed in this office . . . 0 2 6

Drawing and signing the certificate under the officer's hand of any return being filed in this office where no office copy is taken . . . 0 2 6

For every *congé d'élire* for an archbishop . . . 19 15 8

Ditto for a bishop . . . 9 17 10

For every Royal Assent for an archbishop . . . 19 15 8

Ditto for a bishop . . . 9 17 10

For every patent of assistance and writs of restitution for an archbishop . . . 30 17 8

Ditto for a bishop . . . 15 8 10

For every appointment of a bishop for the Isle of Man . . . 9 17 10

For preparing and issuing every *certiorari* other than to remove causes from the inferior Courts . . . 3 0 0

For preparing every *mittimus* and

transcript of commission of lunacy, return and inquisition thereon to the Lord Chancellor of Ireland . . . 3 0 0

For preparing and issuing every special commission to seize lands escheated to the Crown, or purchased by aliens, or forfeited by felons, of one skin only . . . 6 0 0

For every additional skin . . . 3 0 0

For the writ of summons to every peer and law officer, and for election of members . . . 0 7 2

For making out the commission for electing the peers of Scotland . . . 5 14 8

For drawing and engrossing the parliament pawn . . . 10 0 0

Ditto for Ireland . . . 5 0 0

The bags for the writs . . . 0 10 0

Fee from the messenger to the great seal . . . 5 5 0

For sealing every original writ of *scire facias* to revoke letters patent or commission on petition of right . . . 5 0 0

For sealing every alias or *testatum scire facias* . . . 2 10 0

For sealing every *scire facias* on recognizance or traverse . . . 1 0 0

For examining and filing every bond of indemnity against costs and affidavits . . . 1 0 0

For filing a traverse to an inquisition . . . 2 0 0

Entering appearance for every defendant . . . 0 10 0

For entering every rule requiring entry only . . . 0 7 0

For drawing up and entering every other rule . . . 0 10 0

For drawing up and entering a special order . . . 2 0 0

For signing every judgment or entry of *nolle prosequi* . . . 1 0 0

For filing a record of issue on a *scire facias* to revoke letters patent or traverse, and sealing the transcript . . . 5 0 0

Ditto on a *scire facias* on recognizance, or on a bill against an officer of the Court . . . 2 0 0

For drawing and entering an order to vacate letters patent . . . 2 0 0

For filing order for delivery out of bond . . . 0 10 0

For swearing every deponent to an affidavit . . . 0 1 6

For every exhibit thereto . . . 0 2 6

For taxing a bill of costs for every side . . . 0 1 0

For filing every affidavit . . . 0 1 0

For office copy of affidavit, per folio . . . 0 0 4

On filing every bill against an officer of the Court . . . 0 10 0

For preparing, ingrossing, and perfecting the exemplification of any record, if one skin only . . . 5 5 0

For every additional skin . . . 1 6 8

For every search for a precept or writ filed . . . 0 1 0

For searching the kalendar for every year	£	s.	d.
For inspection of any record besides the search	0	1	0
For the office copy of any record, per folio	0	2	6
For certificate of examination under the officer's hand and the office seal	0	3	4
For the re examination of the copy of any record, if short	0	3	6
If long, per folio	0	0	1
For sealing every writ of			
Audita querela	0	15	0
Ad quod damnum	0	10	0
Accedas ad curiam	0	5	0
Attachment	0	5	0
Commission of errors	0	15	0
Contumace capiend'	0	15	0
Coronators eligend' or amovend'	0	10	0
Capias ad satisfaciendum	0	15	0
Certiorari (except to remove a conviction for felony)	0	5	0
Dower	0	5	0
Error	0	10	0
Ditto to Parliament	3	3	0
Excommunicato capiend'	0	15	0
Elegit	0	15	0
Executions judicii	0	5	0
False judgment	0	5	0
Fieri facias	0	15	0
Inquiry of damages	0	15	0
Justices	0	5	0
Levari facias	0	15	0
Mittimus upon certiorari or significavit	0	15	0
Ne exeat regno	0	10	0
Ne admittas	0	5	0
Pone	0	5	0
Procedendo	0	5	0
Prohibition	0	10	0
Quare impedit	0	10	0
Regardatore eligend' or amovend'	0	10	0
Recordari	0	5	0
Supersedeas	0	5	0
Scire facias (except those specially mentioned)	0	10	0
Venditioni exponas	0	15	0
Venire	0	15	0
Ventre inspiciend'	0	15	0
Viridario eligend' or amovend'	0	10	0
Writ of privilege	0	15	0
For resealing every writ	0	2	6

COTTENHAM, C.
LANGDALE, M. R.

LAW OF TITHES.

THE CASE OF SALKELD v. JOHNSTON.

WE have frequently called the attention of our readers to this case in its various stages,—first in the Court of Chancery upon the Vice-Chancellor Wigram's decree for the vicar for the tithes claimed by the bill, which was made on 8th February, 1842; then before Lord Lyndhurst, L. C., upon the appeal from the Vice-Chancellor's

decree, in November, 1843; then in the Court of Common Pleas in 1846, upon the case sent there by Lord Lyndhurst for the opinion of the judges of that Court upon the construction of Lord Tenterden's Tithe Act, the 2 & 3 W. 4, c. 100; then before Lord Cottenham in November, 1847, upon the return of opposite certificates from the judges of the Common Pleas, who were equally divided upon the case, (as the judges of the Court of Queen's Bench had been upon the construction of the statute in *Fellowes v. Clay*, a case of non-payment of all tithes). Thereupon Lord Cottenham sent the same case as stated under Lord Lyndhurst's order for the opinion of the judges of the Court of Exchequer, where the Chief Baron delivered the judgment of that Court, and a certificate was returned to Lord Cottenham from the Chief Baron and from Barons Parke, Alderson, and Platt, before whom the case was argued, that this case was not within Lord Tenterden's Act; and lastly, in August last we published the Lord Chancellor's judgment at length, which concluded by substituting an order dismissing the plaintiff's bill with costs as upon the original hearing of the cause by the Vice-Chancellor Wigram, on 8th February, 1842, on the ground that there was no express allegation in the bill that other small tithes had been paid by the defendants. The bill was a vicar's bill claiming his vicarage to be endowed of all small tithes, except peas and beans, and under which, as proof of the endowment, there was proof of the payment by the defendants of various small tithes, but not of the particular tithes an account of which was prayed by the bill; and the defendants had by statements introduced into the cases, both in the Common Pleas and Exchequer, admitted the payment of other small tithes, but of that fact the Lord Chancellor appears from his judgment not to have been aware. The case has since been reported by Mr. Phillips, 1 M'Naugh. & Gord. 242, who has, in several notes, pointed out various difficulties that suggest themselves in the decision of the case upon the pleadings and evidence in the cause, independently of the statements and admissions made by the parties in the cases as stated for the opinions of the Courts of Common Pleas and Exchequer.

Though the Lord Chancellor has disposed of this case upon the pleadings, yet it appears from his judgment that he entirely dissents from the judgment in, and

certificate from, the Exchequer to the effect that Lord Tenterden's Act only applies where there has been a total non-payment of all tithes. As it appears from the Reports of the Tithe Commissioners that they have, ever since the judgment in, and certificate from, the Exchequer was delivered and sent, been acting upon them, the Lord Chancellor's judgment is, in that respect, of great and general importance. Mr. Phillips, in his report of the case, has not given the arguments of counsel upon it, stating them to have been the same as in the Exchequer, where the cases applicable to the previous state of the law were fully sifted and cleared off, so that upon the argument before the Lord Chancellor counsel were better enabled to observe upon the previous judgments and upon the statute itself and its various enactments.

—We have now before us a full report* of the case and judgment, with the arguments of counsel before the Lord Chancellor, and notes in reference to tithe commutation, in which solicitors find themselves frequently engaged without being able to obtain the assistance of counsel. In the notes, difficulties similar to those suggested in Mr. Phillips's notes upon the judgment are suggested. As to the construction of the statute, the Lord Chancellor's judgment appears to be entirely in accordance with that of Coltman and Erle, JJ., in the Common Pleas.

Upon perusing the report of this case, many considerations, more or less affecting the profession, suggest themselves. We have first an act of parliament said to have been prepared under the supervision of, and introduced into the House of Lords by, a Lord Chief Justice of England, the immediate successor of Lord Ellenborough, and a Chief Justice, who made more judge law which was universally acquiesced in, than any one of his predecessors, and yet has been charged, in respect of this Tithe Act, (which, after dividing both the Courts of Queen's Bench and Common Pleas, had received a sort of compromised construction in the Court of Exchequer, which appears to be absolutely scouted in the Lord Chancellor's judgment,) to have intended simply to carry out the plain proposition of the Real Property Commissioners, that where there has been non-payment of tithes as of right

for a certain number of years and during a certain number of incumbencies, such non-payment alone shall be sufficient to establish the exemption. In short, according to the expression used in the judgment of the Exchequer, to give to the laity a species of *prescription in non decimando*, and establish the right by proof of the *prescription* for the specified period. But it is forcibly observed in the judgment of the late Lord Chief Justice Tindal and of Mr. Justice Cresswell, that if we were allowed to draw any inference from the comparison between the language of the report, and that of the legislature, the marked distinction observable between the two could not have been the result of accident, but must have been advised and intentional. The contention as to the intention of the act may be said to be now fully rekindled by the Lord Chancellor's judgment, and must be settled in the House of Lords.

From the report of the case it appears the bill was filed in 1835, and that the plaintiff obtained a decree in Feb., 1842, which was appealed from, and the appeal heard before Lord Lyndhurst, in November, 1843, who did not reverse the decree, which remained unreversed up to Aug. 1849, when the Lord Chancellor, who, from illness, was then unable to attend in Court, delivered out a written judgment, substituting an order dismissing the bill with costs, as upon the original hearing of the cause by the Vice-Chancellor Wigram, in Feb. 1842, for want of an allegation in the bill that the plaintiff had received other small tithes besides those demanded by his bill. Lord Lyndhurst had by his order of 21st Nov. 1843, made on the appeal, directed a case to be stated for the opinion of the Common Pleas, on the construction of Lord Tenterden's Act, and that all facts necessary to bring that matter into question should be stated in such case, and in such case as agreed upon and signed by the respective counsel of the plaintiff and defendants, in order to raise the question directed upon the construction of the statute, the plaintiff, on the one hand, admitted that there had been non-payment of the particular small tithes demanded during the statutory period, though there was not full proof of such nonpayment by the defendants' evidence in the cause; and the defendants, on the other hand, admitted that the plaintiff had received payment of other small tithes, of which there was proof in the cause in support of the allegation in the bill, that the vicarage was endowed of

* Report of this case, with the Lord Chancellor's Judgment and Construction of the Statute. With Notes in Reference to Tithe Commutation, by W. R. Ripley, Solicitor. Shaw and Sons, Law Publishers, Fetter Lane.

all small tithes, except peas and beans. The judges of the Common Pleas being divided in opinion upon this case, the Lord Chancellor, by his order of the 19th Nov. 1847, directed the same case which is set out verbatim in his lordship's order, to be stated for the opinion of the Court of Exchequer. That Court desiring to have the question in *Fellowes v. Clay*, introduced also into the case, and the respective counsel of the plaintiff and defendants having agreed upon the statements to be introduced for that purpose; by the Lord Chancellor's order of the 20th January, 1848, it was ordered, that these alterations having been agreed upon by the parties, should be introduced into the case, and then, in Aug. 1849, the bill is dismissed with costs, as upon the original hearing for want of an allegation, which was introduced into the case on every stage of it through the Common Pleas and Exchequer, but which allegation is unnecessary according to the terms of the judgment and certificate from the Exchequer, upon the first point in the case. The Lord Chancellor appears from his judgment not to have been aware that this allegation had been introduced into the case, and founds his judgment upon the fact that it had not been so introduced, the plaintiff therefore in this case may have a remedy.

We must refer our readers to the arguments of counsel as given in the report, and to the notes on the case, observing only that it seems to be established in the notes, that it was not the intention of Lord Tenterden to carry out the proposition of the Real Property Commissioners by the act. These notes contain, also, a statement of some unreported and other cases, and it appears from them, that in this case, after the judgment and certificate from the Exchequer, an Assistant Tithe Commissioner was proceeding to award to the plaintiff the tithes decreed, and that a prohibition having been obtained against his so doing until the suit was determined, the Tithe Commissioners had, under the 45th section of 6 & 7 Wm. 4, c. 71, the Tithe Commutation Act, given notice of a meeting to determine in the suit for the purpose of making their award. It would seem that under the 46th section of the Tithe Commutation Act, this case may still be carried into the Court of Queen's Bench, for the purpose of the Commutation, and that under the act the judgment of that Court is final and conclusive.

It is very much to be lamented, that

many important cases, like the present, are decided wholly or partly upon points of pleading; yet it must be admitted to be essential to the right decision of a case, that the allegations in a plaintiff's bill, which the defendant has to meet, should be clearly stated; and that the plaintiff should not be permitted to leave out of his bill important statements, and supply the defect by evidence of facts which not being put in issue, the defendant has no opportunity of rebutting. It is, nevertheless, a sad failure of justice that many years should be occupied in taking the opinions of all the Common Law Courts, and that it turns out the proofs are not sustained by any sufficient allegation on the pleadings.

LECTURES IN GRAY'S INN.

MICHAELMAS TERM.

THE Lectures on the Law of Real Property will be resumed in the Hall of this Society on Monday, the 5th of November next, when an introductory Lecture will be delivered on "The Polity and Spirit of the English Laws, and their Suitableness to the Interests of English Society." The ensuing course of Lectures will be upon "The Rights and Obligations incident to the Ownership of Land in England." The Lectures will, as usual, be delivered every Monday and Thursday evening, at half-past Seven o'clock.

The "Mootings" of the Students will take place once in every fortnight, at a time to be fixed by the Lecturer.

Tickets are given without restriction to Members of any of the Inns of Court applying for the same at the Steward's Office.

NOTES OF THE WEEK.

MICHAELMAS TERM EXAMINATION.

The Candidates for this Term will recollect that the 8th instant is the last day for leaving their Testimonials with the Secretary of the Law Society, and that Tuesday the 13th will be the day of examination.

The printed List of Notices of admission, amounting to 215, is reduced to 173,—the other applicants having been already examined. Allowing for the usual diminution by unavoidable absence, or defective documents, the actual number will probably not exceed 140.

INCORPORATED LAW SOCIETY LECTURES.

Mr. Jebb commenced his course of Lectures on Equity on Friday the 2nd instant, at the Hall of the Incorporated Law Society. The Criminal Law Lectures by Mr. Maynard, will commence on Monday next, the 5th, and Mr. Karslake's on Conveyancing, on Friday the 9th.

instant. The class of articulated clerks in attendance at the Lectures is very numerous.

ANNUAL REGISTRATION OF ATTORNEYS.

The practitioners who have not taken out their certificates for the present year, are reminded that the 14th instant is the last day,—after which it will be necessary to obtain leave of the Court, or a judge, and, in strictness, they must give notice for Hilary Term, and consequently cannot be included in the Law List for 1850.

UTILITY OF A SOLICITOR'S KNOWLEDGE OF CHEMISTRY.

In a complaint before Lewis Lewis, Esq., of Cwmelydach, by one John Joseph, of Penyrallit, Carmarthenshire, against John Jones and Morgan John Evans, for uttering two counterfeit so-

vereigns, in part payment for sheep, it appeared at an adjournment for the production of further evidence, that both the coins passed the gauge and were full weight, although having the appearance of being counterfeit. The solicitor employed for the defence, Mr. George Prytherck Price, of Llandilo, adopted a novel mode of defence, by taking a bottle of nitric acid and immersing the alleged counterfeit coins in a small quantity, whereupon the sovereigns turned out not to be counterfeit. The prisoners had placed some spare mercury from a weather-glass in a vessel, and had put the coins therein, and the mercury having amalgamated with the gold, had formed a coating, which upon friction, had been rendered more perfect, and had given the appearance to the sovereigns of being counterfeit. The prisoners were thereupon discharged, and the complainant had to pay 4l. for costs.—*Carmarthen Journal*.

RECENT DECISIONS IN THE SUPERIOR COURTS. AND SHORT NOTES OF CASES.

Vice-Chancellor of England.

la re Windsor, Staines, and South-Western Railway Company. June 22, 1849.

LANDS' CLAUSES' ACT.—PAYMENT OUT OF COURT.—AFFIDAVIT OF PAYMENT OF COSTS.

A petition was granted for payment out of Court to a railway company of a sum of money paid in for the purchase of land required for a railway, without notice to the vendor, where the purchase money had been paid to the vendor, upon an affidavit of payment of the costs.

THE above railway company had paid a sum of 1,100l. into Court under the 8 Vict. c. 18, for the purchase of certain lands required for their railway. Upon the completion, however, of the purchase, the company had, without reference to such payment into Court, paid the purchase money to the vendor; and now presented this petition for the payment out of Court to them of the 1,100l., without service of notice on the landowner, upon an affidavit of payment of costs.

Wickens in support, cited *Ex parte Eastern Counties Railway Company*, 5 Rail. Ca. 210.

The Vice-Chancellor made the order as prayed.

In re Whitehead. July 13, 1849.

PETITION FOR PAYMENT OF MONEY OUT OF COURT.—SERVICE OF.—COSTS

Where the purchase money of land taken under the 7 G. 4, c. lvi. (the Liverpool Street Act,) was paid into Court and stood to the account of "ex parte the Mayor and Burgesses of Liverpool, to the account of the parties entitled:" Held, that the costs occasioned by the service on the mayor and burgesses of the petition for payment out to parties entitled, must be borne by the petitioners.

THE purchase money of certain property taken under the 7 Geo. 4, c. lvi. (The Liverpool Street Act,) was paid into Court and carried by order of the Court of Exchequer to the account of "*ex parte* the Mayor and Burgesses of Liverpool, to the account of the parties entitled," and a reference was directed as to the parties entitled thereto. The Master having found certain parties entitled, their shares were paid to them, and other parties since come of age, now petitioned for the payment out of Court of their shares: the mayor and burgesses of Liverpool being served with the petition.

Follett, for the mayor and burgesses, contended, that such service was unnecessary, as the fund stood to the account of the petitioners. Prior in support of the petition.

The Vice-Chancellor held, that the mayor and burgesses were entitled to the costs incurred by the service on them, which was quite unnecessary; and that although the 7 Geo. 4, c. lvi. did not provide for the payment of costs arising from the taking of land thereunder, this Court had a clear jurisdiction.

Ex parte Palmer, in re Brighton and Chichester Railway Company. July 31, 1849.

LANDS' CLAUSES' ACT.—PAYMENT OUT OF COURT.—COSTS.

A railway company was ordered to pay the costs of an application for the payment out of Court of a sum of money paid in by the company in consequence of the adverse claim of another party, whose costs, however, had been paid by the petitioner, and the claim settled.

THIS was a petition for the payment out of Court of the purchase money of certain lands, required for the purposes of the Brighton and Chichester Railway, and for the costs of the application. It appeared that a Mr. Padwick had put in an adverse claim upon the estate,

and that the purchase money had consequently been paid into Court under the 8 Vict. c. 18. The claim, however, had been settled, and the costs of Mr. Padwick paid by the petitioner.

Toller in support of the petition; *R. W. Moore* for the company; *Parsons* for Mr. Padwick.

The Vice-Chancellor said, that as Mr. Padwick's costs had been paid by the petitioner, the costs of this application must be paid by the company.

Vice-Chancellor Knight Bruce.

In re Vale of Neath Brewery Company, ex parte Richmond's Executors. August 4, 1849.

WINDING-UP ACT.—TRANSFER OF SHARES CONTRARY TO PARTNERSHIP DEED.—CONTRIBUTORIES.

A motion was refused, without costs, to strike out the names of the executors of a testator from the list of contributories under the 11 & 12 Vict. c. 45, in respect of 30 shares which had been purchased by one of the directors on behalf of the company, on the ground that such a sale was contrary to the deed of partnership.

THIS was a motion to strike out the names of the executors of a Mr. Richmond out of the list of contributories under the 11 & 12 Vict. c. 45, in respect of 30 shares. It appeared that the testator had sold the shares in July, 1842, to a Mr. Buckland, one of the directors, who was said to have purchased on behalf of the company, but without any lawful authority from the shareholders. It appeared that Mr. Richmond had notice that Mr. Buckland bought on behalf of the company.

Lloyd and Roxburgh in support of the motion; *Russell and T. H. Terrell* for the official manager.

The Vice-Chancellor held, that, as according to the decision of the Lord Chancellor in *Es parte Morgan*, 1 Hall & Twells, 320, the sale was contrary to the deed of partnership, Mr. Richmond remained liable, notwithstanding the transfer to Mr. Buckland. The motion must therefore be refused, but without costs, and the costs of the official manager to be paid out of the estate.

Briggs v. Penny. July 25, 26, August 6, 1849.

CONSTRUCTION OF WILL.—PRECATORY WORDS.—REFERENCE TO ASCERTAIN NATURE OF TRUST.

Testatrix by her will gave inter alia certain legacies to her executrix, and bequeathed the residue of her personal estate, after payment of all the legacies and annuities to her executrix, her executors, &c., "well knowing that she will make a good use and dispose of it in a manner in accordance with my views and wishes." There were papers found undated and unattested and written after the Wills' Act, containing certain directions as to the application of some of the property: Held, that the residue was held in trust for certain purposes, and a

reference was directed to ascertain the same, and if none were found, the common administration decree to be made.

THIS suit was instituted by the representatives of the Earl of Oxford, who was sole next of kin of his sister, the Hon. Miss Frances Harley, who, by her will dated in 1835, and codicil in 1836, bequeathed *inter alia* a sum of 3,000*l.* to the defendant, Sarah Penny, and a further sum of 3,000*l.* to her for the trouble she would have as her executrix, and then gave the residue to Sarah Penny, her executors, &c., "well knowing that she will make a good use and dispose of it in a manner in accordance with my views and wishes," and appointed her sole executrix. After the testatrix's death, four documents were found in her desk, one written by herself in ink and the others in pencil, but neither attested nor dated, in one of which she gave various bequests to charities and to individuals, and in another, which was in the form of a letter to her executrix, she requested her to consult a Mr. Harrison as to carrying out her wishes, and pointed out several persons and charities; in another paper, entitled "My wishes," she made similar indications; and in the fourth she wrote her directions to her executrix. The Earl of Oxford was at his sister's death, in November, 1848, her sole next of kin.

Turner, Malins, and F. Walford, for the plaintiffs, cited *Love v. Gaze*, 8 Beav. 472; *Andrew v. Andrew*, 1 Coll. 686.

Bethell, Russell, and Hislop Clarke, for the defendant, cited *Wright v. Atkins*, 1 Turn. & Russ. 156; *Williams v. Kershaw*, 5 C. & F. 111.

Cur. ad. ult.

The Vice-Chancellor held, that the residue was bequeathed to the defendant as a trustee for some purpose or purposes which the will and codicil of the testatrix did not disclose, and referred it to the Master to inquire and report whether the testatrix had declared her wishes by any instrument in writing, and if the inquiry should be answered in the negative, the usual administration decree would be made.

Court of Queen's Bench.

Regina v. Dyer. June 5, July 5, 1849.

QUO WARRANTO.—COUNTY COURTS' ACT.—OFFICE OF HIGH BAILIFF.

Held, that the Queen in Council has power, under the 9 & 10 Vict. c. 95, s. 5, to abolish or continue any Courts of Requests mentioned in schedules A. and B., and that such power is entirely discretionary. And therefore, where the relator was beadle in a Court of Requests which had been unconditionally abolished by an order in Council, he was held not entitled to be appointed bailiff of the new County Court.

AN information had been obtained in the nature of a *quo warranto*, calling on the defendant to show cause by what authority he exercised the office of high bailiff of the Wor-

cestershire County Court held at Kidderminster, on behalf of a Mr. William Merrifield, who was beadle of the old Court of Requests. The defendant pleaded that he was appointed by Benjamin Parham, the judge of the Court, and that the Court of Requests had been abolished under an order in Council. To this plea the relator replied that he had been appointed beadle by the lord of the manor, and that the Court of Requests had not been abolished as alleged in the plea, and that he was entitled to exercise his office. The defendant having demurred,

Talfourd, Q. S., and Hugh Hill, in support of the demurrer, contended that the 5th section of the 9 & 10 Vict. c. 95, empowered her Majesty to abolish Courts of Requests by order in Council, and that, although the relator might be entitled to compensation for the abolition of his office under section 38, he was not entitled to be appointed bailiff of the new Court.

Sir F. Kelly, Godson, Q. C., and Mellish, contra, contended that the order in Council only altered the old Court of Request, under the 12 G. 3, c. lxi., into a new Court under the 9 & 10 Vict. c. 95, and that the same parties were entitled to exercise their offices in the substituted Court.

Cur. ad. vult.

The Court held, that the Queen in Council had power to abolish or to continue any of the existing old Small Debt Courts under the 5th section of the 9 & 10 Vict. c. 95, but such power was entirely in the discretion of her Majesty. The Order of 13th March had unconditionally abolished the Court created by 12 G. 3, c. lxi., and the relator had therefore no claim to the office in the new Court. The judgment must be for the defendant.

Yates v. Palmer. July 5, 1849.

COUNTY COURT.—TITLE TO LAND.—PROHIBITION.—TOO LATE.

A rule nisi for a prohibition to the judge of a County Court, in an action where the title of land came in question, was discharged with costs on the ground that the application was too late—the verdict having been given, and a motion for a new trial refused, and the taxed costs paid under protest.

A rule nisi had been obtained in this case calling on the plaintiff to show cause why a prohibition should not issue, directed to the judge of the Stafford County Court, and why the debt and costs paid by the defendant under protest, should not be returned. It appeared that the defendant, Mrs. Sarah Palmer, a widow, purchased some houses at Wolsley, Staffordshire, in December, 1847, and let the same to one John Yates, at 70*l.* a year, payable half-yearly. Rent having been subsequently in arrear, the defendant put in an execution on the premises, whereupon this action was brought in the County Court by the plaintiff, a relative of the tenant, for having seized his goods and detained them for three days.

At the trial, the plaintiff disputed the defendant's title to the premises, and a verdict was given for the plaintiff for 5*l.* 5*s.* and 9*d.* 9*s.* 8*d.* costs, and the money was paid under protest.

Ball in support of the motion.

The Court said, that the defendant was aware that the title to the land was in question, and did not take any steps by objecting to the Court proceeding in the action, but allowed the case to proceed and a verdict to be pronounced. A motion for a new trial had been refused, and the costs were then taxed and paid under protest. This application was therefore too late, since the proceedings were good on the face of them, and the rule must be discharged with costs.

Common Pleas.

Hopwood v. Thorn. June 25, 1849.

SLANDER, VERBAL AND WRITTEN.

The words in an action of slander in respect of business transactions, and the improper conduct imputed not being stated, held not actionable. Held, also, that letters to a party who had, with the plaintiff's consent, undertaken to investigate the charges against the plaintiff, were privileged, and that therefore words therein were not actionable.

A RULE nisi had been obtained upon leave reserved, calling upon the plaintiff, a dissenting minister, at Thatcham, and formerly in partnership as a draper with the defendant, his brother-in-law, at Southampton, to show cause why a nonsuit should not be entered in this action, or why judgment should not be arrested, or a new trial had. The action was to recover damages for slander, verbal and written, and a verdict was found for the plaintiff for 150*l.*, on the 1st and 2nd counts, and 100*l.* on the 5th and 6th. The words charged were, "He is a rogue, and I can prove him to be so by his books. He pretends to have been as good as a father to his brother-in-law, but he has cheated him of 2,000*l.* You will see what a father he has been. I will expose him, so that he cannot appear again in the pulpit. I wonder how any respectable person can countenance him." It was not proved that the attendance at the plaintiff's chapel had diminished in consequence of the words spoken.

The Court said, that the alleged slander was, that the plaintiff had taken advantage of the defendant in partnership transactions, but without stating the means, and was therefore not actionable. Nor had the words spoken any connexion with the plaintiff's office as a minister. The action was therefore only maintainable on the ground of special damage proved. There was, however, no distinct evidence that the falling off in the attendance at the plaintiff's chapel took place in consequence of the alleged slander, and he had therefore no cause of action on these counts. As to the other counts, imputing the written slander, it appeared that it was contained in a written correspondence between the defendant and a gentleman who

had made an investigation at the plaintiff's request, into the charges alleged. They were therefore privileged, and no action could be sustained either for the verbal or written slander. The rule must be made absolute to enter a nonsuit.

Court of Bankruptcy.

(Coram Mr. Commissioner Goulburn.)

In re Sims. October 20, 1849.

SMALL ASSETS. — THIRD-CLASS CERTIFICATE.

*Where the debts of a bankrupt were 900*l.* and his assets only 3*l.* 8*s.* 6*d.*, the Court awarded him a third-class certificate.*

THE debts of the bankrupt amounted to 900*l.* and his assets to 3*l.* 8*s.* 6*d.* The Commissioner said, it would not be proper to grant a certificate of the first class to such persons. A trader who stopped when there was a reasonable amount of assets, and whose failure arose from unavoidable misfortune, was entitled to a certificate of the first class. In the present case a third class certificate could alone be awarded.

Anon. Oct. 20, 1849.

TRADERS' PETITION FOR ADJUDICATION. — INSUFFICIENT ASSETS.

*The Commissioner must be satisfied that the estate of a trader will produce 5*s.* in the pound to entitle the trader to an adjudication on his own petition.*

A TRADER petitioned for an adjudication against himself under the 93rd section of 12 & 13 Vict. c. 106, founded on his own affidavit of a sufficiency of assets to pay his creditors 5*s.* in the pound.

The Commissioner said, that it must appear to the satisfaction of the Court that the available estate was sufficient to pay 5*s.* in the pound clear of all charges, and the affidavit of the bankrupt alone, without other evidence, was not sufficient.

The solicitor proposed that the bankrupt should be examined, and a meeting was appointed for that purpose.

(Coram Mr. Commissioner Shepherd.)

In re Pym. Oct. 23, 1849.

DEBTOR AND CREDITOR ARRANGEMENTS.

A petitioning debtor who is in prison, in order to entitle himself to a discharge, must produce examined copies of the judgments against him, and show that he has not contracted any debt fraudulently or within the exceptions of the 12 & 13 Vict. c. 106, s. 211.

THIS was a petition under the 211th section of the 12 & 13 Vict. c. 106, for arrangements between debtors and creditors. The debtor was in prison, and an application was made for his discharge.

Mr. Commissioner Shepherd, after a conference with Mr. Commissioner Evans, required examined copies of the judgments to be produced, and an affidavit to be made by the debtor that he had not contracted the debts fraudulently, in order that the Court might consider whether the case did or not come within the exceptions of the proviso in section 211 of the act.

(Coram Mr. Commissioner Evans.)

Anon. Oct. 23, 1849.

TRADER'S SIX MONTHS' RESIDENCE.

An adjudication of bankruptcy will be made, where the trader has resided six months within the district, although he has not carried on business for more than four months.

By the 39th section of 12 & 13 Vict. c. 106, the petition for adjudication is directed to be in the form set out in Schedule M., supported by an affidavit stating where the trader has resided for the last six months. In the present case the trader had been in business only four months; but he had resided more than six months within the district.

The Commissioner directed that the affidavit should be altered by stating the fact of residence, and omitting that of carrying on business. He declined deciding what would be the course in case there had been neither a residence nor a carrying on business for six months.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Michaelmas Term, 1849.

AT LINCOLN'S INN.

Lord Chancellor.

APPEALS.

Hodgkinson v. Hodgkinson.
Knight v. Majoribanks, Ditto v. Gibbs, appeal.
Searf v. Soulby, appeal.
Onslow v. Wallis, appeal.
Cudde v. Morley, appeal.
Chambers v. Siggers, appeal.

M'Intosh v. Great Western Railway Co., appeal.
Attorney-General v. Jones, cause by order.
Phillipson v. Gatty, Gatty v. Phillipson, appeal.
Staniland v. Willott, appeal.
Coward v. Coward, appeal.
Cooke v. Cholmondeley, Ditto v. Vaux, appeal.
Cole v. Scott, appeal.
Rackham v. Siddall, appeal.
Williams v. Powell, Ditto v. Davis, Price v. Powell, appeal.
Monro v. Taylor, appeal.
Duncan v. Luntley, appeal.
Malcolm v. Scott, appeal.

Boothby v. Boothby, appeal.
 Fuller v. Bennett, appeal.
 Watson v. Masters, appeal.
 Dodson v. Powell, appeal.
 Hawkins v. Jackson, appeal.
 Hunter v. Daniel, appeal.
 Cowell v. Watts, Watts v. Cowell, appeal.
 Newman v. Hutton, appeal.
 Andrew v. Andrew, appeal.
 Marks v. Solomons, appeal.
 Purchase v. Shallis, appeal.
 Attorney-General v. Gibbs, Rock v. Ditto, appl.
 Begshaw v. East India Railway, Ditto v. Ditto, 2 appeals.
 Masters v. Scales, re-bearing.
 Loader v. Clarke, appeal.
 Miller v. Priddon, appeal.
 Cross v. Sprigg, appeal.
 Sanderson v. Cockermouth and Workington Rail. Company, appeal.
 Griggs v. Staples, appeal.
 Dawson v. Brinckman, appeal.
 Bagshaw v. M'Niell, appeal.
 Attorney-Gen. v. Corporation of London, appeal.
 Padbury v. Clarke, appeal.
 Attorney-General v. Pilgrim, appeal.
 Coleman v. Mellersh, appeal.
 Adams v. Blackwall, appeal.
 Hirst v. Tolson, appeal.
 Tomlinson v. Troughton, Haydock v. Tomlinson, appeal.
 Weaver v. Grant, appeal.
 Waring v. the Manchester, Sheffield, and Lancashire Railway Company, appeal.
 Coleman v. Mellersh, appeal.
 Phelps v. Protheroe, appeal.
 Hughes v. Williams, appeal.
 Walsh v. Trevanion, 4 causes, appeal.
 Price v. Berrington, 3 causes, appeal.
 Williamson v. Gordon, appeal.
 Benyon v. Nettlefold, appeal.
 Griggs v. Staples, appeal.
 Hutchison v. Teycheune, appeal.
 Short v. Mercier, appeal.
 Roberts v. Jones, appeal.
 Lassence v. Tierney, appeal.
 Fowler v. Reynal, appeal.
 Caton v. Ridout, appeal.
 Weaver v. Grant, appeal.

Master of the Rolls.

JUDGMENTS (reserved).

{ Hooper v. Salmon.
 { Tugwell v. Hooper.
 Sturge v. Sturge.
 { Rodick v. Gandell.
 { Same v. Same. }

PLEAS AND DEMURRERS.

Stand over, Dean of Ely v. Gayford.
 Do., Same v. Waddelow.
 Do., Same v. Same.
 Do., Same v. Bliss.
 Do., Same v. Shillito.
 Do., Same v. Hensley.
 S. O. until hearing, Lewis v. Baldwin, on defendant's objection for want of parties.
 Whitfield v. Day, dem.
 Tagg v. South Devon Railway Company, exons.
 2 sets.
 Salomons v. Laing, demur. of Laing and others.
 Salomons v. Laing, demur. of Wilkinson and others.

CAUSES.

S. O. To present petition, Stourton v. Jerningham.
 Stand over, { Gas Light and
 till after { Coke Com. v. Symonds }
 Report on { Symonds v. Gas Light and }
 exceptions. { Stillman v. Gas Light and } fur. dirs. and } costs.
 { Coke Comp. }
 Christy v. Courtenay, fur. dirs. costs & petition.
 S. O. to { Baynton v. Hooper. }
 amend. { Same v. Same. }
 S. O., until case returned from Q. B., Wilson v. Eden, fur. dirs. and costs.
 Stand over, Biggs v. Naylor.
 Stand over to add parties, Johnson v. Thomas.
 Stand over { Hele v. Bexley, }
 until after { Same v. Same, } exons.
 trial of { Same v. Same, } fur. dirs.
 action at law. { Same v. Bowyer, } and costs.
 { Same v. Donovan, }
 Vallance v. Amiot, exons.
 Hargrave v. Hargrave, fur. dirs. and costs.
 Next { Ballenger v. Hawes, } fur. dirs. costs,
 Term, { Buck v. Dennis, } and petition.
 Read v. Smith, fur. dirs. and costs.
 { Attorney-General v. Marquis of Bristol }
 { Same v. Hine. }
 { Holl v. Gordon, }
 { Same v. Holl. }
 Foy v. Hawes.
 Blenkinsopp v. Blenkinsopp.
 { Kelly v. Cheswell, }
 { Same v. Same, } fur. dirs. and costs.
 { Skinner v. Kelly, }
 Jones v. Powell.
 Agassiz v. Squire.
 Thornber v. Sheard.
 Fenwick v. Greenwell, fur. dirs. and costs.
 Pope v. Gardner, ditto.
 Laycock v. Smith.
 { Attorney-General v. Walsely, } exceptions, fur
 { Same v. Dale, } dirs. and costs.
 Lomax v. Lomax, fur. dirs. and costs.
 { Read v. Strangways, } exceptions, fur. dirs.
 { Same v. Treherne, } and costs.
 { Howard v. Prince, }
 { Same v. Stapleton, } fur. dirs. and costs.
 { Same v. Howard, }
 { Greenwood v. Penny, } fur. dirs. and costs.
 { Boyle v. Same, }
 { Hitchcock v. Clendinen, } fur. dirs. costs & petn.
 { Same v. Aspinwall, } in M'Hardy v. Hitch-
 { Same v. Hardy. } cock.
 Lockhart v. Hardy,
 Thomas v. Same,
 Norman v. Same,
 Hardy v. Lockhart,
 Lockhart v. Arundell, } fur. dirs. and costs.
 Same v. Lee,
 Same v. Hardy,
 Same v. Crouch.
 NEW CAUSES.
 Rooth v. Tomlinson.
 Langdale v. Morrison.
 Coxhead v. Babb, at request of Babb v. Coxhead.
 Ditto v. Ditto, at request of defendant May.
 Whalley v. Lord Suffield.

{ Meddowcroft v. Campbell, }
 { Same v. Hughes. }
 { Ballenger v. Hawes, }
 { Buck v. Denis. }
 Gregory v. Davies.
 Penruddock v. Hammond.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Collett v. Morrison, demurrer.
 Sergrove v. Mayhew, plea.
 Allen v. Wilson.
To be mentioned, Hobson v. McKensie.
 Ditto, Barnard v. Earl of Liverpool.
 Ditto, Roberts v. Roberts, further dirs. and costs.
 Parsons v. Bonn.
 Bell v. Hoyer.
 Hughes v. Pride, fur. dirs. and petition.
 Knight v. Cox, ditto and petn.
 Sanders v. Sanders, 2 causes, Ditto v. Ditto, fur. dirs. and costs.
 Gates v. Lord Dunboyne, Vaughan v. Vanderstagen.
 Greasley v. Jones.
 Fairfax v. Drought, Ditto v. Oakes, fur. dirs. and costs.
 Williams v. Williams.
 Glendow v. Hall Glass Company.
 Fowler v. Fowler, 2 causes.
 Percy v. Dicker.
 Beasley v. Snare.
 Parkyn v. Cape.
 Quicke v. Kingdon.
 Forward v. Edginton.
 Jones v. Brandon.
 Stammers v. Halliday, fur. dirs. and costs.
 Deare v. Bates, ditto.
 Newman v. Warner.
 Fairhurst v. Malcolm, exons.
 Freeman v. Norton.
 Mason (pauper) v. Wakeman.
 Bell v. Rea, Rea v. Bell.
 Holbeck (pauper) v. Holbeck.
 Attorney-General v. Adams.
 Bignold v. Yeo.
 Galland v. Watson, fur. dirs. and costs.
 Gifford v. Pryor.
 Barnett v. Sheffield.
 Spilling v. Sims, fur. dirs. & costs.
 A. Fletcher v. Moore, ditto.
 Branch v. Bank of England, ditto.
 Attorney-General v. Brown's Hospital, Ditto v. French.
 Bird v. Smith.
 Enderby v. Gunter.
 Wilkinson v. Hartley, exons. and fur. dirs.
 Jones v. Parry.
 Green v. Wallis.
 Patwick v. Halslip.
 Mayor of Berwick v. Murray.
 Scarsbrook v. Skelmersdale.
 Fletcher v. Ramaden.
 Langdon v. Woods, fur. dirs. and costs.
 Gardner v. Williams.
 Nov. 5, Ashburnham v. Ashburnham.
 Devey v. Fisher.
 S. O., Wright v. Barnewell, fur. dirs. and petn.
 Roe v. Gotheridge, pro confesso.
 Bryant v. Bryant, fur. dirs. and costs.
 Short, Sergison v. Sergison, ditto.
 Short, Brook v. Haigh.
 Foster v. Greaves.

Watson v. Boothby.
 Wright v. Bell.
 Trant v. Duffell, fur. dirs.
 Sheppard v. Hancock.
 Byrne v. Earl of Ranfurly.
 Porter v. Simson.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Harrison v. Biagood, demurrer.
 Tarleton v. Liddell, ditto.
 Padley v. Lincoln Water Works Company, exons. as to pleading.
 Henderson v. Richards, dem.
 Stanley v. Bulkeley.
 Mendes v. Brandon.
 Norgate v. Baron Thurlow.
 Good v. Good.
 S. O., Caton v. Rideout, fur. dirs. and costs.
 Grimley v. Pratt.
 Hawtin v. West.
 Shipton v. Shipton.
 Lee v. Browne.
 Carter v. James, Ditto v. Harding.
 Chilton v. Rogers, fur. dirs. and costs.
 Luger v. Clark.
 Clark v. Hambrook.
 Rilev v. Garnett.
 Towne v. Dean.
 Bryans v. Hinde.
 Llewellyn v. Morgan, fur. dirs. and costs.
 Coleman v. Jessop, 4 causes, ditto.
 Hanbury v. Fletcher, exons. and fur. dirs.
 Webb v. Tilsley.
 Jordan v. Upton, pro confesso.
 Bramston v. Bartrop.
 Howe v. Howe, fur. dirs. and costs.
 Offen v. Reeve, Ditto v. Southarden.
 Hay v. Willoughby, fur. dirs. and costs.
 Craighill v. Craighill.
 Plews v. Mason.
 Gibson v. Fluit.
 Fenner v. Boag.
 Rogers v. Quarterman.
 Webster v. Butterworth.
 Emmett v. Dewhirst.
 Villebois v. Villebois.
 Gore v. Bowser.

Vice-Chancellor Stirling.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Marquis of Londonderry v. Ovingdon, 4 causes, part heard.
 Coope v. Carter, 3 causes, fur. dirs., part heard.
 Vincent v. Bishop of Sodor and Man, fur. dirs. and costs.
 Dixon v. Pyner, part heard.
 Cross v. Sprigg.
 Tidmas v. Thomson, 3 causes, Ditto v. Masters.
 Rees v. Ditto, fur. dirs. and costs.
 Davidson v. Proctor, ditto.
 Griffith v. Lunell, 4 causes.
 Watson v. Masters, exons.
 Wood v. Freeman, exons. and fur. dirs.
 Duke of Beaufort v. Morris, fur. dirs. and costs.
 Clay v. Rufford.
 Mence v. Bagster.
 Thompson v. Roper, Ditto v. Manley.
 James v. Lord Wynford, 4 causes, fur. dirs. and costs.
 Whitlow v. Dilworth, Ditto v. Whitlow, ditto.

Lane v. Salmon, 2 causes.
 Tyde v. Fearn, Barnard v. Trower.
 Houlmin v. Copland.
 Malpas v. Miller.
 Attorney-General v. Laws, fur. dirn. and costs.
 Ford v. Ford, Ditto v. Blackburn, ditto.
 Mainwaring v. Beavor, Ditto v. Mainwaring, ditto.
 Selby v. Thompson, 19 causes, ditto.
 Greenwood v. Cleave, ditto.
 Beckett v. Cawood.
 Davis v. Davis, 5 causes, ditto.
 Knockor v. Woollett.
 Tipples v. Coates, exors. 2 sets.
 Parkes v. Sanders.
 Morrison v. Hoppe, exors.
 Smith v. Capron.
 Johnson v. Johnson, Ditto v. Ditto.
 Thomas v. Thomas.

COMMON LAW SITTINGS.

Queen's Bench.

In and after Michaelmas Term, 1819.

MIDDLESEX.

In Term.

A list of Causes will be printed immediately, but as the uncontradicted statement of either side that a cause is too long to be tried in Term, it will be withdrawn from such list, and a small number of completed and new causes will be put into the list, day by day, in their usual order.

1st Sitting, Saturday Nov. 3
 And following days at Eleven o'clock.
 2nd Sitting, Wednesday Nov. 7
 And subsequent days at Eleven o'clock.
 3rd Sitting, Friday Nov. 23
 At half-past Nine o'clock precisely, for Unde-
 fended Causes only.

After Term.

Tuesday Nov. 27
 At half-past 9 o'clock.

LONDON.

In Term.

Saturday Nov. 24
 Sitting at 10 o'clock.

For Undefended Causes and such Causes as are
 tried in Middlesex after Term, with judgment of
 the Term.

After Term.

Wednesday Nov. 28
 (To adjourn.)

N.B. The hours of attendance at the Marshal's
 Office of this Court will in future be from 11 till 5
 during Term and Sittings, instead of from 11 to 2,
 and 6 to 8.

Common Pleas.

In and after Michaelmas Term, 1849.

In Term.

MIDDLESEX.

LONDON.

Wednesday . . Nov. 7 | Saturday . . Nov. 10
 Wednesday . . . 14 | Friday . . . 16

After Term.

MIDDLESEX.

LONDON.

Tuesday . . Nov. 27 | Wednesday . Nov. 28

N.B.—The Court will sit at 10 o'clock in the fore-
 noon on each of the days in Term, and at half-past
 nine precisely on each of the days after Term.

The causes in the list for each of the above sitting
 days in Term, if not disposed of on those days, will
 be tried by adjournment on the days following each
 of such sitting days.

On Wednesday the 28th Nov., in London, no
 causes will be tried, but the Court will adjourn to a
 future day.

The hours of attendance at the Marshal's Office
 during Term, and Sittings after Term, will in fu-
 ture be from 11 to 5.

Exchequer of Pleas.

In and after Michaelmas Term, 1849.

In Term.

IN MIDDLESEX.

1st Sitting, Saturday Nov. 3
 2nd Sitting, Monday 12
 3rd Sitting, Tuesday 20

IN LONDON.

1st Sitting, Saturday Nov. 10
 2nd Sitting, Monday 19

After Term.

IN MIDDLESEX.

IN LONDON.

Tuesday . . Nov. 27 | Wednesday . Nov. 28
 (To adjourn only.)

The Court will sit in Middlesex, at Nisi Prius in
 Term, by adjournment, from day to day, until the
 causes entered for the respective Middlesex sittings
 are disposed of.

The Court will sit, during and after Term, at ten
 o'clock.

COMMON LAW CAUSE LISTS.

Queen's Bench.

New Trials remaining undetermined at the end of
 the Sittings after Trinity Term, 1849.

Easter Term, 1848.

Kent.—Doe d. Warren and another v. Brydges,
 Brydges tent.—Sir F. Thesiger.

(Stands over till after Michaelmas Term, 1849.)

Michaelmas Term, 1848.

Liverpool.—Jenkyns v. Brown and others—W. H.
 Watson.

Hilary Term, 1849.

Middlesex.—Hankinson and another, executors,
 &c., v. Alcock—Humphrey.

Middlesex.—Gadsby v. Estall—Sir F. Thesiger.

Middlesex.—Morrell and another v. Wootton, &c.
 —Humphrey.

Middlesex.—The Queen v. Smith and others—Sir
 F. Thesiger.

Middlesex.—Same v. Same—Cockburn.

Middlesex.—Neeves v. Burrage—Knowles.

Middlesex.—Osterman v. Bateman—Gurney.

London.—Job v. Hudson, one, &c.—Humphrey.

Tried during Hilary Term, 1849.

Middlesex.—Arden v. Sullivan—Petersdorff.

Middlesex.—Doe d. Howe v. Thornton—Cox.

Easter Term, 1849.

Middlesex.—Keene v. Ward—Bramwell.
Middlesex.—Colombine v. Pennell and another—Attorney-General.
Middlesex.—Gaskill v. Skene—O'Malley.
Middlesex.—Margeson v. Wright—Chambers.
Middlesex.—Doe d. Morrison and others v. Glover—Chambers.
Middlesex.—Robins v. Tripp—Heaton.
Middlesex.—Bass and another v. Wells—Martin.
Middlesex.—Chapman v. Speller—Humfrey.
Middlesex.—Wakeman v. Lindsey and others—Udall.
London.—Huntley v. Donovan—Chambers.
London.—Charman v. Steers, Esq., &c.—Serjeant Shee.
London.—Fussell, P. O. v. Lewis—W. H. Watson
Hants.—Doe d. Commissioners of Woods and Forests v. Bone—Butt.
Wilts.—Doe d. Lord Arundel and others v. Fowler—Greenwood.
Wilts.—The Queen v. Inhabitants of Cricklade.—Same.
Devon.—Brown and another v. Coleridge, clerk, &c.—Crowder.
Devon.—Drew and another v. Same—Same.
Devon.—Mayne v. Same—Same.
Devon.—Hannaford v. Gill.—Butt.
Cornwall.—Williams v. Teague and another—Cockburn.
Cornwall.—Doe d. Stevens v. Stevens—Crowder.
Somerset.—Barwell and others v. Inhabitants of Hundreds of Winterstoke—Same.
Somerset.—Doe d. Welsh and others v. Notley—Butt.
Northampton.—Powell v. Hibbert—Humfrey.
Northampton.—Doe d. Hubbard v. Hubbard—Whitehurst.
Lincoln.—Allison v. Draper—Same.
Lincoln.—The Queen v. Betts and others—Same.
Lincoln.—Same v. Same—Humfrey.
Warwick.—Edwards v. Knowles—Whitehurst.
Cambridge.—Morton v. Tebbutt—Worledge.
Durham.—Humphries v. Brogden, secretary, &c.—Knowles.
York.—Livingstone, surviving partner, &c. v. Whiteing—Pashley.
Liverpool.—Manchester, Sheffield, and Lincolnshire Railway Co. v. Blinkborne—W. H. Watson.
Essex.—Doe d. Davenish v. Moffatt—Chambers.
Essex.—Leary v. Patrick and another—Same.
Sussex.—Hurst v. Hurst—Serjeant Shee.
Sussex.—Gates v. Goaden—Hawkins.
Surrey.—Dimes v. Petley—Serjeant Shee.
Worcester.—Phillipotts and others v. Evert and another—Serjeant Talfourd.
Stafford.—Banks v. Baldwin.—Same.
Stafford.—Doe d. Sayer and others v. Hatton—Godson.
Salop.—Griffiths v. Marcy—Serjeant Talfourd.
Monmouth.—Williams and others v. James—Same.

Tried during Trinity Term, 1849.

Middlesex.—Page v. More—Chambers.
Middlesex.—Johnson v. Clarke—Serjeant Shee.
Middlesex.—Goodman v. Pocock—Humfrey.

SPECIAL CASES AND DEMURRERS.

Michaelmas Term, 1849.

Whitmore and Co.—Morris, Bt., v. Duke of Beaufort, dem.
 (Stands over by consent.)

Wade and P.—Doe d. Payne v. Plyer, special case.
 (Part heard.)
 M'Lood and S.—Smith and another v. Alexander and another, dem.
 Maples and Co.—Small and others v. Gibson, N. O. V.
 Sanger.—Howley, extrix., &c. v. Knight, sued with another, dem.
 Crafter.—Milner v. Janer, dem.
 Cree and Son.—Wilson v. Eden, Bt., special case.
 Marson and D.—Marson and another v. Lund, dem.
 Wyche.—Flockton and others v. Hall and others, dem.
 Beddome and W.—Dowdall v. Hallett and others, dem. to plaintiff's declaration.
 Beddome and W.—Same v. Same, dem. to defendant Clarke's pleas.
 Beddome and W.—Same v. Same, dem. to defendant Allan's pleas.
 Beddome and W.—Same v. Same, dem. to defendant Hatfield's pleas.
 Kinder.—Ryan v. Giles, dem.
 Vickery.—Ricketts v. Loftus, dem.
 Palmer & Co.—Evelyn v. Worsfold, special case.
 Beddome and W.—Steele v. Hoe, special case.
 Beddome and W.—Dewar and another v. Hallett sued with others, dem.
 Beddome and W.—Same v. Whittam, sued with others, dem.
 Beddome and W.—Same v. Hatfield, sued with others, dem.
 Sanger.—Palmer, executor, &c. v. Welch, dem.
 Maples and Co.—Huntley and others v. Pinto and another, special case.
 Ravenscroft.—Houlden v. Smith, Esq., special case.
 Whitaker.—Bunter and another v. Cresswell, clerk, special case.
 Dickson and O.—Whitmore and others, assignees, &c. v. Hale and another, dem.
 Yallop.—Armitage v. Insole and another, dem.
 Oliverson and Co.—Thompson, Esq., M. P., v. Ingham, Esq., and another, dem.
 Patten.—Meyrick and another, executors, &c. v. Anderson, executrix, dem.
 Nixon.—Ghislin v. Deen, dem.
 Holcombe.—Tull v. Tull, dem.
 Lacy and Co.—Chrisp v. Atwell, dem.
 Lyon and Co.—Wray v. Chapman and another, special case.
 Clowes and Co.—Bittlestone and others v. Eastern Counties Railway Company, special case.
 Raw.—Adams v. Andrews, dem.
 Stroughill.—Stronghill v. Buck, dem.
 White and Co.—Cook v. Field, dem.
 Cox and Son.—Knight and others v. Faith and another, special case.
 Chaplin and S.—Toller v. Attwood, special case.
 Scadding and Son.—Tims and another v. Donovan, dem.
 Gill.—Meyer and another v. Cockburn, dem.
 Sargent.—Morris v. Walker, dem.
 Same.—Bennett and others v. Batten and others, dem.
 Wathen and P.—Barnes and another v. Keane, dem.
 Tilson and Co.—West Cornwall Railway Company v. Mowatt, special verdict.
 Pittendreich.—Staunton and another v. Wood and others, dem.

Benhart.—Passenger v. Measam, dem.
 Clarke—Pollett (a pauper) v. Chesterton, dem.
 Osherson & Co.—The Queen v. Bishop of Exeter, dem.

Webb, defendant in person.—Boyce v. Webb, dem.

Triader & E.—Birkenhead, Lancashire, and Cheshire Junction Railway Company v. Chadwick, dem.

Lyle.—Simpson v. Simpson, dem.
 Williamson and H.—Sanderson and another v. Dobson and others, special case.

Johnson and Co.—Steer v. Bowerman, award.
 Wigglesworth and Co.—Hutchinson v. North-Western Railway Company, dem.

Sherpe and Co.—Holmes and another v. Bromfield, dem.

Pemberton.—Chabot v. Lord Morpeth and others, dem.

Clowes and Co.—Valpy and another, assignees, Oakley, dem.

Watson.—Blackford v. Hill, dem.
 Jaques and Co.—Burley, surviving executor, &c., v. Dobson, surviving executor, &c., dem.

Guillaume.—Forster v. Hoggart and another, special case.

Crafter.—Chrip v. Atwell, dem.

ENLARGED RULES.

Michaelmas Term, 1849.

First Day.

Evans and another v. Bowen and others, for Bail Court.

In the matter of Phillips and another, for Bail Court.

In the matter of William Ross and the York, Newcastle, and Berwick Railway Company.

In the matter of H. M. Daniel, gent., one, &c.

In the matter of Pidaley and another, for Bail Court.

Brough v. Crienberg.

The Queen v. Aberdare Canal Company.

Second Day.

The Queen v. Tithe Commissioners.

Same v. Lincoln Water-works, for Bail Court.

Same v. William Whitehouse Hill.

Common Pleas.

Demurrer Paper of Michaelmas Term, 1849.

Wednesday, 7th November.

Robinson and ux. v. Marquis of Bristol and others, in quare impedit.

Westropp and others v. Solomon.

Fagan v. Harrison.

The Banwen Iron Company v. Barnett.

Edwards and others v. Jevons.

Johnson v. Frew.

Gibboas v. Vouillon.

Porcher and another v. Gardner and others.

Bell and others, assignees, v. Bidgood.

Johns v. Dickinson.

Doe Cannon and another v. Rucastle.

Bell and others, assignees, v. Cory, public officer.

Jones v. How and another.

Sterry, executrix, v. Clifton.

Gooch and others v. Johnson.

Phillips and another v. Pickford.

Navone v. Hadden and another.

Temple v. Sleigh.

Storie, clerk, v. Bishop of Winchester.

Christmas v. Beecham and another.

Williams and another v. Samuel and another.

Cunliffe and another v. Ley.

Anderson v. Coventry and another.

In re Foster.

Hancock and another v. York, Newcastle, and

Berwick Railway Company.

Harrison v. Round.

Tassell v. Cooper.

Same v. Same.

Overton and another v. Harvey.

REMANET PAPER OF MICHAELMAS TERM, 1849.

Enlarged Rule.

To 6th day.—In the matter of the Arbitration between James Stroud and the East and West India Docks and Birmingham Junction Railway Company.

New Trials of Michaelmas Term last.

Middlesex, Morgan v. Field.

Middlesex, Newton, Esq. v. John Chaplin.

Middlesex, Russell v. Tubb.

Middlesex, Smith v. Pritchard and others.

London, Monaghan v. Walter and another.

London, Fitch v. Martyr.

London, Howard v. Mull.

London, Smith and others v. The Hull Glass Co.

London, Moss and others v. Smith and another.

London, Stebbing v. Spicer.

Surrey, Hamilton v. Cochrane.

Bristol, Acraman and ors., assignees, v. Morrice.

Bristol, Lewis, exor., v. Lloyd.

Glamorgan, Doe Rogers v. Price and another.

Oxon, Hicks v. Gregory, exor.

New Trials of Hilary Term last.

Middlesex, West v. Baxendale.

London, Barnes v. Troup.

London, Warren v. Peabody.

London, Vines v. Arnold.

New Trials of Easter Term last.

Middlesex, Graham v. Gould and another.

London, Gillingham v. Stuart.

London, Stansfeld and others, assignees v. Gladstone.

London, Kincaid and others v. Willis, secretary.

London, Same v. Same.

Berks, The Newbury and Spenshamland Gas and Coke Company v. Benny.

Cambridge, Crisp v. White.

Bucks, Tindal and another v. Deering, Esq.

Surrey, Vander Donckt v. Thellusson.

Sussex, Turner and another v. Kenworthy.

Yorkshire, Doe Strickland v. Strickland, Bart.

New Trials of Trinity Term last.

London, Dimes v. Wright and another.

Middlesex, Blake v. Nixon.

Middlesex, Lord v. Hall.

London, Cook v. Gawen.

CUR. AD. VULT.

Morgan and another, executors, v. Earl Abergavenny.

Phillips v. Lewis.

Fitzgerald v. Fitzgerald.

Russell v. Briant.

Croll v. Edge.

Munroe and others v. Bordier and another.

Sands and others v. Clarke.

Barnes, admor., v. Ward.

Thompson v. Wesleyan Newspaper Association.

Same v. Same.

Lewis v. Campbell.

Somerville v. Hawkins.

Jones and another v. Broadhurst.
 Devaux and another v. Conolly.
 In the matter of Thomas D. Keighley, gent., in
 Keighley v. Goodman.
 Harcourt v. Dickson.
 Catlin v. Hills and others.
 Heyhoe v. Burge.
 Morse and another v. same.

Exchequer of Pleas.

DEMURRERS.

Michaelmas Term, 1849. (13th Vict.)

Remanets from Trinity Term, 1849.

For Judgment.

Luccock and others v. Smith.
 (Heard 2nd May, 1849.)

For Argument.

Southby v. Bridgman.
 (Stayed by injunction.)
 Cobbett, a pauper, v. Sir G. Grey, Bart. and
 another.

(Part heard 4th June, 1849.)

Waring v. Sellers.
 Morrison and others v. Glover.
 Skelton and others, churchwardens, v. Rushby
 and others.

Shepherd and others v. Duncan.
 Dampier v. Pole.
 Shuttleworth and others v. Thompson.
 Midland Great Western Railway Company of
 Ireland v. Evans.

Webster v. Planche.
 Higginbottom and others v. Burge.
 Kempster v. Whitehouse and others.
 Howell v. Rodbard and others.
 Thompson v. Ayling.

SPECIAL CASES.

For Michaelmas Term, 1849.

Remanets from Trinity Term, 1849.

For Judgment.

Re Willis, a bankrupt.
 (Heard 25th April, 1849.)

For Argument.

Bird and others, assignees, v. Brown and others,
 by order of *Nisi Prius*.

Mortimer v. Hartley, by order of V. C. Bruce.
 Follett and others, &c. v. Moore, by order of *Nisi*
Prius.

Blagrove v. Blagrove and others, by order of
 Vice-Chancellor Knight Bruce.
 Morrell, sen. v. Fisher and another, by order of
 Vice-Chancellor Knight Bruce.

Duke of Beaufort v. C. H. Smith, by order of
 Baron Alderson.

Norman v. Thompson, special verdict.
 Spence and others v. Mountague, by order of
 Baron Platt.

Freeman and others, assignees, v. Whitaker, by
 order of Baron Platt.

NEW TRIAL PAPER.

For Michaelmas Term, 1849.

FOR JUDGMENT.

Moved Michaelmas Term, 1848.

Stofford, Mr. Baron Rolfe.—Sharrod v. London
 and North Western Railway Company.—Mr. God-
 son.

(Heard 8th Feb. 1849.)

Moved Easter Term, 1849.

Worcester, Mr. Baron Platt.—Brettell and others
 v. Williams and others.—Mr. Serjeant Talfourd.
 (Heard 19th June, 1849.)

Worcester, Mr. Baron Platt.—Brettell and others
 v. Williams and others.—Mr. Keating.
 (Heard 20th June, 1849.)

FOR ARGUMENT.

Moved Easter Term, 1847.

London, Lord Chief Baron.—Ralli v. Dennis-
 town.—Mr. Attorney-General.
 (Ordered to be restored 19th April, 1849.)

Moved Michaelmas Term, 1848.

York, Mr. Justice Cresswell.—Graburn v. Hor-
 berry.—Mr. Manisty.

York, Mr. Justice Cresswell.—Graburn v. Everett
 —Mr. Manisty.

Newcastle, Mr. Justice Cresswell.—Ness v. Rich-
 ardson.—Mr. Watson.

Newcastle, Mr. Justice Cresswell.—Ness v. Gla-
 holm.—Mr. Watson.

(Proceedings stayed pursuant to an order of Mr.
 Baron Rolfe.)

Moved Easter Term, 1849.

Middlesex, Lord Chief Baron.—Wakley v. Cooke
 and another.—Mr. Serjt. Wilkins.

Middlesex, Mr. Baron Platt.—Scariabrook and
 others v. Kennard and another.—Sir F. Theisiger.

London, Lord Chief Baron.—Woolfe v. Cobbold
 and another.—Mr. Martin.

London, Lord Chief Baron.—Cobbett v. Grey,
 Bart. and others.—Plaintiff in person.

London, Mr. Baron Platt.—Grapes v. Bunney—
 Mr. Cockburn.

Maidstone, Mr. Baron Parks.—Midland Great
 Western Railway Company of Ireland v. Farquhar
 —Sir F. Theisiger.

(7th June. To stand over until further order.)

Maidstone, Mr. Baron Parks.—Midland Great
 Western Railway Company of Ireland v. Master-
 man.—Sir F. Theisiger.

(7th June, 1849. To stand over until further order.)
 Liverpool, Mr. Justice Coleridge.—Wellheim v.

Paulet.—Mr. Martin.

Liverpool, Mr. Justice Coleridge.—Paulet v. Well-
 heim.—Mr. Watson.

Moved Hilary Term, 1849, and revised and restored
in Trinity Term, 1849.

Middlesex, Mr. Baron Rolfe.—Hawkins v. Har-
 wood.—Mr. Chambers.

Middlesex, Mr. Baron Rolfe.—Brook v. Rawll—
 Mr. Chambers.

London, Mr. Baron Rolfe.—Dalton v. Bush.—Mr.
 Gurney.

Moved Trinity Term, 1849.

Middlesex, Mr. Baron Platt.—Cherry v. Hemming
 and another.—Mr. Knowles.

Moved after the 4th day of Trinity Term, 1849.

Middlesex.—Mr. Baron Parks.—Mayhew v.
 Cooze.—Mr. Humphrey.

Middlesex, Mr. Baron Parks.—Mayhew v.
 Tuck.—Mr. Humphrey.

Middlesex, Mr. Baron Parks.—Howe v. Pike and
 another.—Mr. Serjeant Wilkins.

Middlesex, Mr. Baron Alderson.—Vogel and an-
 other v. Rowe.—Mr. Hoggins.

London, Mr. Baron Parks.—Sleigh v. Sleigh—
 Mr. Crowder.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, NOVEMBER 10, 1849.  
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OPERATION OF THE BANKRUPT LAW CONSOLIDATION ACT.

TRADER DEBTOR'S SUMMONS.

IN pursuance of the plan already indicated, we proceed to describe and examine the changes introduced by the 12 & 13 Vict. c. 106, in the law and practice of that branch of the bankruptcy jurisdiction which relates to the summoning of Trader Debtors.

Before the act of last session came into operation, two distinct courses of procedure were open to creditors—regulated by different acts of parliament—under which debtors who were traders within the meaning of the Bankrupt Laws, might be compelled, as it were, to give security for an admitted debt, or, on default, made bankrupt.

The act 1 & 2 Vict. c. 110, s. 8, empowered a creditor to the amount of 100*l.* to file an affidavit of his debt in the Court of Bankruptcy, and to serve personally on the debtor a copy of such affidavit, and a notice requiring immediate payment, and then the statute declared, that if the debtor did not, within 21 days after service of such affidavit and notice, pay, secure, or compound for the debt, to the satisfaction of the creditor, or enter into a bond with sufficient securities to be approved of by a Bankrupt Commissioner, for payment of the debt or tender of the debtor after judgment recovered by action, the debtor should be deemed to have committed an act of bankruptcy on the 22nd day after service of such affidavit and notice; provided a fiat issued within two months from the filing of such affidavit.

The act 5 & 6 Vict. c. 122, provided a totally different course of procedure, with a view to produce the same ultimate results as were apparently contemplated by 1 & 2 Vict. c. 110, s. 8. The first step to be

taken by a creditor under the 5 & 6 Vict. c. 122, was to serve personally on his debtor a written account of the particulars of his demand, with a notice demanding immediate payment. An affidavit of debt was then filed by the creditor in the Court of Bankruptcy, upon which a summons was issued, calling upon the debtor to appear personally before a Commissioner, and declare whether he admitted the demand of the creditor partially or wholly, or whether he believed he had a good defence to the demand? If the debtor neglected to appear pursuant to the summons, or on appearance refused to sign an admission of the debt, or to depose on oath that he believed he had a good defence to the demand, and also failed within 14 days after service of the summons to pay, secure, or compound to the satisfaction of the creditor, or enter into a bond with two sureties, to be approved by the Court, to pay such sum as should be recovered by action, then the debtor was deemed to have committed an act of bankruptcy on the 15th day after service of the summons, provided a fiat issued within two months from the time of filing the affidavit. If the debtor appeared and admitted part of the demand, and deposed that he believed he had good defence to the residue, he was bound to pay, secure, compound, or give a bond, for the sum so admitted, or with respect to such sum, the same consequences followed. A debtor, however, who, upon his appearance, thought fit to depose upon oath that he verily believed he had a good defence to the demand of the summoning creditor, was entitled, without more, to a discharge from the summons, and according to the practice of some at least of the Bankrupt Commissioners, such summonses were uniformly discharged with costs, to be paid by the creditor.

It was for some time doubted whether
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the 1 & 2 Vict. c. 110, s. 8, was not impliedly repealed by the 5 & 6 Vict. c. 122, but that doubt was set at rest by some recent decisions, and the simplicity and certainty of the proceedings prescribed by the earlier act, rendered it preferable, in the minds of many practitioners, to the more complicated system of procedure created by the 5 & 6 Vict. c. 122, which very frequently terminated, as already intimated, by an unscrupulous debtor deposing to his belief of a defence, and thus rendering the proceedings against him totally abortive.

The 1 & 2 Vict. c. 110, s. 8, and the 5 & 6 Vict. c. 122, are now repealed by the 12 & 13 Vict. c. 106, which substitutes a series of provisions, intended no doubt to afford greater facilities to, and confer more extensive powers on, creditors, and at the same time to prevent those evasions by unprincipled debtors, which sometimes nullified the intentions of the legislature. The provisions of the 5 & 6 Vict. c. 122, as regard the summoning of trader debtors, are adopted in the new act, with some important alterations, which we now proceed to notice. The 78th sect. of the 12 & 13 Vict. c. 106, is as follows:—

“That if any creditor of any such trader shall file an affidavit in the Court in the district in which such trader shall reside, in the form specified in Schedule F, hereunto annexed, of the truth of his debt, and of the debtor, as he verily believes being such trader, and of the delivery to such trader personally, or to some adult inmate at his usual or last known place of abode or business, of an account in writing of the particulars of his demand, with a notice thereunder requiring immediate payment thereof, in the form specified in Schedule G, annexed to this act, it shall be lawful for the Court in which such affidavit shall be filed, to issue a summons in writing in the form contained in Schedule H, annexed to this act, calling upon such trader to appear before such Court and stating in such summons the purpose for which such trader is called upon to appear as hereinafter provided: Provided always, that if the demand of a creditor appear by such affidavit to be due from two or more persons carrying on trade in partnership, the delivery of such account and notice to any one of the partners personally, or to some adult inmate at his usual or last known place of abode or business, and also at the place of business of the firm as aforesaid, shall be sufficient to authorize the Court to issue such summons against any other of such partners, as well as against the partner served personally, with such account and notice.”

The course of proceeding pointed out in this section, namely, the delivery of the particulars of demand and notice requiring

payment, the filing of an affidavit of debt and the issue of a summons calling upon the trader debtor to appear, is in complete accordance with that previously established by the 5 & 6 Vict. c. 122, s. 11, nor do the forms prescribed by the section above cited, differ in any important particular from those in use under the repealed act; but in comparing the corresponding sections of the two acts, it will be found that the present act allows of the delivery of the particulars of demand and notice requiring payment, to some adult inmate at the usual, or last known, place of abode or business of the debtor, as equivalent to personal service, which was expressly required by the former act. The proviso, as to the notice requisite in cases of partnership to enable the Court to summon all the members of a firm, upon delivery of particulars with demand of payment to one partner, is also new, but the proviso is not carefully framed, for although a service by delivery at the place of abode or business of one partner is clearly contemplated, it may be inferred from the concluding sentence, that the partner served should be “served personally with such account and notice.” Section 73 does not indicate how the summons is to be served, but as we shall hereafter see, there is good reason to conclude that the service of the summons must in every case be personal.

The manner of proceeding upon the appearance of a party summoned is now regulated by section 79, which is in these words:—

“That upon the appearance of any such trader so summoned as aforesaid it shall be lawful for the Court to require him to state whether or not he admits the demand of the creditor, or any and what part thereof, and if such trader shall admit such demand, or any part thereof, to reduce such admission into writing in the form contained in Schedule I, annexed to this act; and such admission so reduced into writing such trader is hereby required to sign, and, being so signed, the same shall thereupon be filed in such Court; and it shall also be lawful for the Court to allow such trader upon his said appearance to make a deposition upon oath, in writing under his hand, to be filed in such Court, in the form contained in Schedule J, annexed to this act, that he verily believes he has a good defence upon the merits to such demand, or to some and what part thereof; and in such case it shall be lawful for the Court at the same time to require such trader to enter into a bond, according to the form contained in Schedule K, to this act annexed, in such sum and with such two sufficient sureties as the Court shall approve of, to pay such sum or sums as shall be recovered, together with such costs as shall be

given in any action which shall have been or shall be brought for the recovery of such demand, or of any part thereof in respect of which such deposition shall be made."

Two very important changes are introduced by this section, both calculated no doubt to render the proceeding by summons more effective and advantageous to creditors. In the first place, the debtor, instead of being called upon to depose merely that he verily believes he has a good defence to the summoning creditor's demand, can only comply with this provision of the act by swearing that he verily believes he has a good defence "on the merits;" and what is likely to be far more stringent and effectual, he may be required to enter into a bond with approved sureties to pay the debt and costs recovered in any action brought in respect of the summoning creditor's demand. It may admit of some doubt upon a consideration of this, together with the section next following, whether that part of the section which authorizes the Court to require the party summoned, and who deposes to a good defence on the merits, to enter into a bond, is imperative or only discretionary, but we have not heard that any of the learned Commissioners have yet determined that the bond may not be dispensed with. Upon looking at the form of the bond as it appears in the Schedule to the act, it is described as a "Form of Bond to pay *admitted* demand," which is an obvious error, the bond as well as the section on which it was founded, clearly contemplating the case of a debtor disputing the demand.

The next section (80) provides for the case of a trader debtor not attending the summons or refusing to admit the demand or depose to a defence. It is in the following terms.—

"That if any such trader so summoned as aforesaid shall not come before the Court at the time appointed (having no lawful impediment made known to and proved to the satisfaction of the Court and allowed), or if any such trader, upon his appearance to such summons, or at any enlargement or adjournment thereof, shall refuse to admit such demand, and shall not make a deposition in the form aforesaid, that he believes he has a good defence upon the merits to such demand, or some part thereof, and (if required by the Court so to do) enter into such bond as last aforesaid, then and in either of the said cases, if such trader shall not, within seven days *after personal service* of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure, or compound for such demand to the satisfaction of such creditor, or enter into a bond, in such sum and with two sufficient

sureties as such Court shall approve of, to pay such sum as shall be recovered in any action which shall have been brought or shall hereafter be brought for the recovering of the same, together with such costs as shall be given in such action, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after service of such summons, provided a petition for adjudication of bankruptcy shall be filed against such trader within two months from the filing of such affidavit."

It may be fairly inferred from the words printed in italics in the section last cited, that it is discretionary and not imperative upon the Commissioner to require a bond from a trader who appears upon summons and deposes to a good defence upon the merits. A different construction would lead to the result, that a debtor who declined to appear to the summons, or appeared and refused either to admit or deny the demand, would be placed in every instance in as good a position as the trader appearing and deposing to a defence upon the merits. It can scarcely be supposed that this was intended, and the more reasonable construction would be, that the Court should only require a bond from a trader deposing to a defence when the trader has failed to satisfy the Court that there is any reasonable ground for relying upon a defence. This construction, however, is not free from practical difficulty, as it assumes that the Commissioner may call upon the party summoned to state the nature of the defence, which is something very like trying the matter in dispute. Until the law and practice on this subject have been settled, the safest and most convenient course for a trader who thinks it expedient to resist being made bankrupt in respect of a demand he is unwilling to admit, is, to be prepared with a bond with two sureties in double the sum demanded, conditioned to pay the amount recovered in any action brought or to be brought and costs, and to lay such bond before the Commissioner for his approval, (after due notice to the summoning creditor,) within seven days after personal service of the summons. The difficulty of finding two sufficient sureties, we are well aware, will frequently render the course suggested impracticable, however desirable it may be.

The most striking alteration effected in the law as it previously existed, by section 80, is shortening the time, from fourteen to seven days, allowed to the alleged debtor to comply with the requisitions of the statute. As the law now stands, the act of bankruptcy is complete after default on the

eight instead of the fifteenth day from the service of the summons. This restriction of the time allowed to the debtor will necessarily call for the more frequent exercise of the power given to the Court by section 83, to enlarge the time for calling upon the trader to state whether or not he admits the demand, and for entering into the bond.

It may be added, that the terms of section 80, place it beyond all doubt, that the summons should be served personally on the alleged debtor, although no directions are given with respect to the service in the previous section which authorises the Court to issue such summons.

The 81st section, which declares that a trader appearing upon summons and signing and filing an admission of the demand, and not paying, securing, or compounding for the same within seven days after the filing of the admission, shall be deemed to have committed an act of bankruptcy on the eighth day, is similar to the corresponding sect. of the 5 and 6 Vict. c. 122, only that the time is made seven instead of fourteen days, in conformity with the provision in section 80 above cited. Under this section, as well as under that for which it is substituted, the debtor by appearing and admitting the demand, obtains an extension of time to pay, secure, or compound, but the time is now shortened to seven days.

The 82nd section, which contemplates the not unusual case of a trader appearing on summons and admitting part only of a demand, is thus framed:

"If any such trader so summoned as aforesaid, shall upon his appearance sign an admission for part only of such demand in the form aforesaid, and shall not make a deposition in the form aforesaid that he believes he has a good defence upon the merits to the residue of such demand, and (if required by the Court so to do) enter into such bond as aforesaid to pay such sum or sums as shall be recovered, together with such costs as shall be given in any such action as aforesaid for the recovery of such residue, then and in such case if such trader as to the sum so admitted shall not within seven days next after the filing of such admission pay or tender and offer to pay to such creditor the sum so admitted, or secure or compound for the same to the satisfaction of the creditor, and as to the residue of such demand shall not within seven days after personal service of such summons, or within such enlarged time as may be granted to him in that behalf, pay, secure, or compound for the same to the satisfaction of such creditor, or enter into a bond, in such sum and with two sufficient sureties as the Court shall approve of, to pay such sum as shall be reco-

vered in any action which shall have been brought or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in such action, every such trader shall be deemed to have committed an act of bankruptcy on the eighth day after service of such summons, provided a petition for adjudication of bankruptcy shall be filed within two months from the filing of such affidavit."

Under the terms of this section the debtor is to pay, secure, or compound for the part admitted within seven days after filing the admission, and as to the residue to pay, secure, compound, or give bond to pay what may be recovered in an action, seven days after service of the summons.

Section 83, of the new act, is a re-enactment of the 5 & 6 Vict. c. 122, s. 16, declaring what shall be deemed a refusal to admit a debt, and giving the Court authority, upon reasonable cause shown, to enlarge the time for calling upon the trader to state whether or not he admits the debt and for entering into the bond. Section 84, which provides, that an admission elsewhere than in Court, if attested by the trader's attorney, in a form prescribed by the act, shall have the same force as an admission signed in Court, is also substantially a re-enactment of the 5 & 6 Vict. c. 122, s. 17, and does not call for any remark.

Section 85, which gives the Court power to award costs is in the following terms:

"Where any trader, against whom an affidavit of debt is filed by any creditor as aforesaid, shall be summoned to appear before the Court in which such affidavit shall be filed, every such creditor or trader shall have such costs as the Court in its discretion shall think fit, or the Court may direct the costs of either party of, incident to, or attendant upon such affidavit and summons, to abide the event of any action which shall have been brought or shall thereafter be brought for the recovery of such demand or any part thereof, and in such case such costs shall be costs in the cause, and recovered under the judgment and execution in such action."

Under the 5 & 6 Vict. c. 122, s. 18 the Court had power to award the trader summoned his costs at discretion, and, as before intimated, some of the Commissioners, in the exercise of this discretion, uniformly awarded costs to a trader who appeared and deposed to a good defence. Under the present act, the Court may award costs at its discretion, either to the summoning creditor or the alleged debtor, or may order the costs to abide the event of any action brought or to be brought for the demand. The principles upon which

this power ought to be exercised require to be well considered, and we should regret to find it laid down without qualification, as it is stated to have been by one of the Town Commissioners, that in every case in which the debtor admits the debt, the creditor is entitled to the costs of the proceeding.

The last section of the new act with regard to trader debtors' summonses is the 86th, which is a mere re-enactment of the 5 & 6 Vict. c. 122, s. 19, which many of our readers are aware provided, that where a summoning creditor brings an action and does not recover the amount sworn to in his affidavit filed in bankruptcy, if such affidavit be made for such amount without probable cause, the defendant in the action shall be entitled to costs.*

The length to which the exposition and commentary upon this division of the statute extends, precludes us from adding anything beyond the remark, that if the stringent and summary process provided by the sections above referred to, are found to operate beneficially as regards traders subject to the Bankrupt Laws, there seems no sufficient reason why the principle of those provisions should not be extended for the protection of creditors to debtors who are not technically within the class known as traders.

LAW-REFORMING DIFFICULTIES.

DEAD MEN'S CLAUSES.^b

MR. à BECKETT has chosen a very convenient season to discuss his plan for improving the Law regarding the Administration of the Estates of deceased persons. The "Dead Men's Clauses" of Lord Brougham's Bill of last session, attracted much attention. The evil was admitted; but the remedy was disapproved. His lordship in his celebrated Letter to Sir James Graham, has expressed his urgent desire to effect the proposed improvement,

* The construction of this provision and the practice under it were discussed and settled in a late case of *Smith v. Temperly*, reported 16 Mees. & W. 273.

^b Law Reforming Difficulties, exemplified in a Letter to Lord Brougham and Vaux, accompanied by an Analysis of a Bill for the Improvement of the Law relating to the Administration of deceased Persons' Estates, and a Statement showing its existing evils, first submitted to the Government, Dec. 24, 1842. By Thomas Turner à Beckett, Attorney-at-Law. London: Henry Batterworth, Law Bookseller, Fleet Street. 1849.

and has notified his intention to bring it forward next session, in case the Lord Chancellor should not do so. The present pamphlet, therefore, of Mr. à Beckett comes most opportunely before the profession, and we shall proceed to set forth its contents, so far as our limits will permit.

As an instance of the grievance which is sought to be redressed, Mr. à Beckett states—

"It is now nearly ten years since, that being concerned professionally for a widow lady having a claim by specialty amounting to about 300*l.* upon a deceased person's estate, I was astonished at finding that although it realized 2,500*l.*, and my client was almost the only specialty creditor, she would obtain 35*l.* only. The estate had been in the Master's Office for some years, and the costs came to within a very small amount of the whole sum collected. I felt humbled and degraded at belonging to a profession by means of which such a frightful confiscation of property could be committed; and although the solicitors of both sides were really kind-hearted honourable men, I felt as I sought an explanation from each of them on the matter, that they would appear in the eyes of the world as nothing better than a brace of smooth-tongued scoundrels. I know that they were not so, and that to the existence of a foolish and wicked system of legal administration, was to be attributed the frightful sacrifice of property that took place in the case I have quoted.

"This circumstance made a very deep impression upon my mind, which was strengthened by several others of a similar character that came soon afterwards under my notice. I was thus led to consider very carefully the state of the Law of Administration in all its branches."

To remedy these evils the author prepared a bill of upwards of a hundred clauses, and in the pamphlet before us he gives an interesting statement of his various efforts to bring his plan before the influential authorities. He has shown a most laudable zeal in the promotion of his object, conducted with much perseverance and ability. We cannot better serve the cause in which Mr. à Beckett is engaged than by quoting the answers he received from the eminent Law Officers and Law Reformers to whom he submitted his proposed remedies. And we must here observe, that however the author may grieve over the delay (as he does most eloquently) of his sanguine expectations, it is evident that his suggestions have been received and considered with much flattering attention by personages of no small consideration. The bill was first submitted to Sir F. Pollock, then the Attorney-General, who thus replied in the early part of 1843:—

"The subject to which your letter, and the papers that accompany it refer, is one of the greatest importance, and, it must be admitted, calls for great attention. I think your plan worthy of more than consideration. Your proposition is of so important and bold a character as to be of necessity a ministerial question. I shall be most happy in bringing it under the consideration of the government, and I trust with effect."

And afterwards we find that the subject was brought to the notice of Lord Chancellor Lyndhurst in 1845, in a letter from Sir F. Pollock to Mr. Perry, his lordship's principal secretary:—

"The proposal to administer in a summary way relief in cases of probate or intestacy where estates are of small value—to compel the production of accounts—the distribution of funds, &c., is, I think, very important—it is much wanted—more wanted than clamorously called for—but it will be a solid and a safe improvement, of great practical use—highly creditable to the government—very popular—and, to the revenue, very profitable. The measure, as submitted to the Chancellor, in the epistle I delivered to you the other day and as drawn out in a bill with all clauses *in extenso*—goes further than is necessary, and further than I approve of. I would confine the bill to providing for cases of wills and administrations, and omit all about the other consequences of death. One suggestion is to give legal remedy to survivors, where death is occasioned by negligence;—but I think this will never do—death by negligence is *felony*. But I will talk this over with you some time when you have looked at the bill."

Mr. à Beckett's next movement for the promotion of his object was in the Law Amendment Society, where he met Mr. Spence, the Queen's Counsel, who kindly aided him in his views. He says,—

"At his invitation I placed in his hands a draft of my bill, and called on him a few days afterwards to receive his judgment. It was not altogether favourable, but he told me that he liked my measure so much that he would willingly assist me to alter it so as to meet his objections, and under his advice and direction I separated the measure into two bills, confining one to Administration by the act of the Court,—the other to non-judicial Administration. He suggested the addition of some clauses the importance of which I had not foreseen, viz., those relating to the getting in of real estates, when the personal estate should prove insufficient, and he settled for me the form in which they should be drawn, and, indeed, every section underwent his most patient consideration. By his advice I placed the clauses under various heads, by which you will see considerable clearness is given to the objects of the measure, and when all was finished he wrote to the Lord Chancellor (Cottenham) a

letter which, although I saw it not, was I know well-calculated to draw his attention to my scheme, in the amended form, under which I then submitted it to him."

This was in 1847, soon after which Mr. à Beckett began again to despond, when

"At the conclusion of one of the Law Amendment meetings I was brought into conversation with Mr. Vizard, the Secretary of Bankrupts. I was not then known to him personally, but having ascertained who I was, he called me aside, and informed me to my inexpressible surprise and gratification, that the Lord Chancellor was considering my plan, and that he seemed to think very highly of it, leading me, at the same time to hope that I should very soon have the Chancellor's decision upon it. I shall not easily forget the feeling with which I wended my way homeward that moonlight night; I fear that the gentle planet added its influence to that which Mr. Vizard's communication produced upon my imagination."

In the latter part of the same year we find the following passage in a letter from Dr. Lushington to the author:—

"That the present state of the law as to the subject discussed by you is most defective, I think all lawyers of experience in such matters must agree—the only question is, what ought to be the remedy? and I think that the profession and the public are indebted to you for having with so much labour digested a plan. I should greatly rejoice to see it taken into consideration by the Legislature at the instance of some person of weight, thoroughly conversant with the subject."

Passing on to January, 1849, we read a letter from Master Senior to the Author, in which his views are thus countenanced:—

"I agree with you that the accounts of the estates of deceased persons would be much better taken by such a machinery as you propose, than in the Masters' Offices. Taking such accounts, forms only a portion of our business; it has little resemblance to the remainder; we have no assistance like that afforded by official assignees; we have no means of compelling punctual attendance. A tribunal with these aids, and employed solely on this and similar matters, would do its work more quickly and more satisfactorily.

"The expense and delay which occur in our offices are sometimes great, and often unavoidable. The expense arises from the necessary employment of the time of men expensively educated, and, therefore, highly paid. Evidence which is to be obtained from surveyors and accountants, inquiries which are to be conducted by solicitors, must be expensive. The delay frequently arises from the expense. The client is unwilling or unable to provide the funds. The solicitor is unwilling to advance them, and the cause stands still for want of some one to defray its movement.

"And painful experience forces me to believe that this very expense and delay are often motives to suits, especially to administration suits. Most of such writs originate with a residuary legatee, who wishes for delay, or with a solicitor, the next friend of an infant, or the cousin of an executor, who wishes for costs."

Thus it appears that Mr. à Beckett's labours have been very extensively recognised and approved. He thus sums up the scope of his plan :—

"It provides machinery for securing the payment of the probate duty to the state.

"It destroys the iniquitous system of preferences by executors and administrators under which the most bare-faced injustice is now every day committed.

"It places specialty and simple contract debts on an equal footing.

"It provides for the getting in of real estates when the personal estate is insufficient, the want of which provision in the Bankrupt Law Consolidation Bill, it appears, was the principal cause of the withdrawal of the dead men's clauses.

"It gives power to revive actions abated by death.

"It gives executors ample protection against demands arising after dividing the estates among the legatees."

We believe that the evil complained of will be generally admitted, and that the remedy, if confided to the Masters in Chancery instead of the Commissioners in Bankruptcy, will also be approved. We say generally admitted and approved, but there are very numerous exceptions to be considered, and for which judicious provisions should be made. The evils, indeed, though frequently very striking, are in a large number of instances patiently submitted to. Take the following as an example : A trader dies in debt to persons with whom he has dealt for many years, and to whom he has paid large sums. He has left a widow and several children. The creditors are called together and informed of the state of affairs. Debts are owing to the deceased, some of them doubtful; others bad. What is to be done? Shall time be given, or a composition accepted, or a bill in equity filed? The majority of the creditors who are also traders, and liable to the like calamity as the deceased, are reluctant to press severely upon the widow and orphans—and time is given, and probably in the result a small dividend only is obtained; but under a common feeling for persons in the same condition of life as themselves, and pity for their bereavement and their misfortunes, an appeal to the Court of Chancery is seldom resorted to.

Now the question, *practically*, is, would the widow and orphans be called to an account if the proposed *cheap* and *speedy* remedy could be obtained in a Court of *Bankruptcy*? Our notion is, that in nineteen cases out of twenty, the remedy would not be adopted. And this for several reasons: 1st, because of the commiseration for the innocent family of the deceased, and the reluctance to inflict misery upon them. 2nd, Because, whilst *certain* misery would fall upon the widow and orphans, the benefit to the creditors would be very small and *uncertain*. After paying official assignees, brokers, messengers, as well as the lawyers and the fees of Court,—to say nothing of their own loss of time,—the "grand total" of the creditors would probably be represented by a very small fraction of a pound sterling. No wonder therefore that the evil in question,—though undeniably large as our author describes it,—has been and doubtless will be generously endured. 3rd. We believe that the transfer of this department of business from the Court of Chancery to the Court of Bankruptcy will increase the reluctance to resort to that unpopular remedy. In a large number of instances the creditors are the friends of the deceased, and feel pity for his surviving family. They will be averse to degrade that family by bringing its affairs into a Court of Bankruptcy. Unless, therefore, a different tribunal from that of the *Bankruptcy* Court can be established, we think the measure would not only be formidably and perhaps successfully opposed altogether, but if carried in spite of opposition, would not be successful in its operation, because the larger number of cases would not be voluntarily brought within its jurisdiction. Whilst we say this, we think that great praise is due to the author, who has with much diligence and talent brought the subject before the public and the profession.

We are aware that the Masters in Chancery have not hitherto stood in great repute for their powers of despatch, but lately they have proceeded under the Joint-Stock Companies' Winding-up Act with a celerity which must satisfy even the most ardent Law Reformer. The evidence of Master Farrer before the Select Committee, stated p. 3, *ante*, amply proves the competency of the office to discharge very extensive new duties. As they are familiar with administration suits they would, under the proposed simplification of the proceedings, be enabled readily to despatch any increased business which the alteration

might produce. It is a part of the plan of Bankruptcy Reform to reduce the number of Commissioners and Registrars, and the reduced number will probably be fully occupied without the transfer of administration suits from the Court of Chancery. Let Mr. a Beckett remodel his bill, giving summary powers to the Master to carry the plan into effect, and he may then reasonably expect to succeed in his object.

NOTICES OF NEW BOOKS.

The Legal Year Book, Almanack, and Diary for 1850 : comprising a Law Kalendar ; the Statutes Effecting Alterations in the Law ; Standing Orders relating to Private Bills ; Officers of the Houses of Parliament ; New Rules ; the Courts, Judges, Commissioners, and Officers ; Retainers of Counsel Rules ; Precedence of the Bar ; Examination and Registration of Attorneys ; the various Law Societies ; Stamps, Tables, &c. By the Editor of "the Legal Observer." Maxwell and Son, 32, Bell Yard, Lincoln's Inn.

THE present volume is the third of an enlarged series of this annual work, for many years published in connection with the *Legal Observer*. Its contents have been selected with a view to practical utility in the daily business of the attorney and solicitor, and are as follow :—

Part I.—*The Kalendar, Time Tables, &c.*

Law Kalendar ; Regulations of the Terms and Vacations, and Return Days of Process ; Orders in Chancery regulating Holidays, Attendance, and Vacations ; Computation of Time ; Times in Chancery Procedure ; Statute and Rule regulating Common Law Holidays ; Law Offices, and Times of Attendance ; Chancery ; Queen's Bench ; Common Pleas ; Exchequer ; Admiralty and Ecclesiastical ; Local Courts ; Patents ; Public Records ; Registry of Deeds ; Acknowledgments of Deeds by Married Women ; Joint-Stock Companies' Registration ; Registry of Judgments ; Annual Summary of Legal Business.

Part II.—*Parliament.*

Statutes Effecting Alterations in the Law. (With notes.) 12 & 13 Vic.

I. *The Courts.*—

1. Bankrupt Law Consolidation ; 2. Small Debts' Act Amendment ; 3. Further Relief of Trustees ; 4. Sequestrators' Remedies ; 5. Joint-Stock Companies' Winding-up Amendment ; 6. Buckingham Assizes ; Sheriff of Westmoreland ; 8. Petty Bag Office and Enrolment in Chancery Amendment ; 9. House of Lords' Costs Taxation ; 10. Admiralty Jurisdiction.

II. *Law of Property.*—

1. Private Money Drainage ; 2. Defective Powers of Leasing ; 3. Defects in Leases Act Suspension ; 4. Inclosure of Commons Act Extension ; 5. Annual Inclosure ; 6. Second Inclosure of Commons ; 7. County and Police Rates ; 8. Turnpike Trusts' Union ; 9. Turnpike Acts' Continuance ; 10. Boroughs' Relief ; 11. Highway Rates.

III. *Poor Law.*—

1. Appointment of Overseers ; 2. Maintenance of Out-door Poor ; 3. Costs of Distraint for Highway Rates ; 4. Relief of Poor in Cities and Boroughs ; 5. Exemption of Stock in Trade from Poor-rate ; 6. Poor Law Union Charges' Act Amendment.

IV. *Criminal Law.*—

1. Law of Larceny Amendment ; 2. Petty Sessions in Counties and Boroughs ; 3. Quarter Sessions Courts' Procedure.

V. *General.*—

1. Annual Indemnity ; 2. Allowances on the purchase of Stamps ; 3. Passengers ; 4. Loan Societies ; 5. Marriages in Foreign Countries ; 6. Metropolitan Sewers Amendment ; 7. Nuisances Removal Amendment ; 8. General Board of Health.

Index to the Public General Acts ; Standing Orders relating to Private Bills ; The Ministry, Public Boards, &c. ; Officers of the House of Peers ; Officers of the House of Commons ; Lawyers in Parliament.

Part III.—*The Courts.*

New Rules and Orders.—

Common Law Side of the Court of Chancery—Petty Bag Office ; Fees ; Judgment as in case of Nonsuit ; Sitting of the Courts of Equity in Lincoln's Inn ; Arrangements of the Business of the Courts ; Order in Council regulating Clerks' Salaries in the County Courts.

Judges and Officers in all the Courts ; Magistrates and Law Officers of London ; Records ; Clerks of the Peace.

Part IV.—*Commissioners.*

Poor Law ; Lunacy ; Tithe ; Copyhold ; Inclosure ; Real Property ; Joint-Stock Companies' Registration ; Woods and Forests ; Metropolitan Improvements ; Metropolitan Buildings ; Births and Deaths ; Police ; Perpetual Commissioners for taking Acknowledgments of Married Women ; Commissioners for taking Affidavits.

Part V.—*The Bar.*

Rules of Practice relating to Retainers of Counsel ; Queen's Counsel and Serjeants, in order of Precedence ; Barristers called 1848—9.

Part VI.—*Attorneys and Solicitors.*

Analysis of Attorneys' and Solicitors' Act ; Rule of Court for examination and admission on the Roll ; Examination Rules and Practical Directions ; Renewal of Attorneys' Certificates ; Annual Registration ; Examiners ; Government Solicitors ; Parliamentary Agents ; Town Clerks ; Incorporated Law Society ; Metropolitan and Provincial Law Association ; Law Association for the Benefit of Widows.

&c.; United Law Clerks' Society; Provincial Law Societies.

Part VII.—General.

Law and Commercial Stamps; Regulations for Allowance of Spoiled Stamps; Distribution of Intestates' Estates; Post Office Regulations; Tables of Interest, Wages, &c.; Transfers and Dividends; Legal Obituary; Expectation of Life; Rates of Insurance.

Diary for 1850.

Enlarged and Improved, with Notes of Business to be transacted, and Times of Proceeding, under numerous Statutes, Legal and General, &c.

REVIVAL OF THE ABUSE OF ATTORNEYS.

FRASER'S MAGAZINE.

OUR attention has just been called to an article in *Fraser's Magazine* of this month, containing an attack on the attorneys as absurd as it is scurrilous, bearing the title of "The Avatar of Attorneyism." That periodical work used to be respectably and ably conducted, and we are surprised that it should give place to so useless and unjust a censure in the present day,—not on the "black sheep," (which it is welcome to shear,) but on the whole flock of the profession.

It appears to be from the pen of a barrister, who complains bitterly that the attorneys'

profits exceed those of the advocates; and that instead of rewarding his unknown merit, the attorneys give briefs to their own relations. He is very indignant that "barristers without briefs" should be the subject of ridicule, and is in needless wrath that an equal proportion of attorneys are not without clients. He relates anecdotes of the time of Judge Jeffries, and tells us that Mr. Carlyle, struck with the extraordinary influence of lawyers in the French Revolution, gave the phenomenon the designation of "The Avatar of Attorneyism,"—forgetting that the revolutionary French lawyers were rather advocates than attorneys. He quotes somewhat largely from the last Report of the Metropolitan and Provincial Law Association, in which the grievances of the profession are set forth, and appears ignorantly to apprehend that the redress of those grievances will be injurious to his own craft.

We thought the time was gone by for the repetition of jests of farce writers upon the professors of Law, Physic, and Divinity. The honourable character and public usefulness of professional men have long been justly acknowledged, as well by all the respectable and influential members of the Press, as by the Bar, the Bench, and the Legislature. We question whether it will be worth while to enter into the details of the wholesale libel we refer to. Our able correspondents have passed it unnoticed; but we owe our thanks for a severe and just castigation which has been inflicted by the Editor of "The Press," upon the author of this so-called "Avatar of Attorneyism."

ATTORNEYS TO BE ADMITTED.—LAST DAY OF MICHAELMAS TERM.

Added to the List pursuant to Judge's Order.

Queen's Bench.

Clerks' Names and Residences.

Dutton, William Henry, 64, Judd Street,
Brunswick Square, and Newcastle-under-
Lyne
Sheppard, Shearman, Wakefield
Smith, Daniel Brummell, 24, Golden Square .

To whom Articled, Assigned, &c.

W. Dutton, Chancery Lane; W. A. S. Pemberton, Symond's Inn.
C. Shearman, Gray's Inn; Capes and Stuart, Field Court, Gray's Inn.
Geo. Smith, Golden Square; St. Pierre Butler Hook, Coleman Street; Geo. Smith, Golden Square.

RENEWAL OF CERTIFICATES.

Last day of Michaelmas Term, 1849.

Queen's Bench.

Barrett, Joseph Radcliffe, 56, Westbourne Grove, Bayswater; 18, Upper Gloster Place, Dorset Square; and Gravesend.
Bell, Edward, Stafford.
Fenwick, Henry, Edge Lane, West Derby, Lancaster; Walton on the Hill.
Hughes, Linton, Liverpool.
Hutchinson, Thomas, Hartlepool, Durham.
Joachim Bristowe, 3, Vernon Place, Bloomsbury Square.

Mylne, Everard, 53, Great Coram Street, Middlesex.

Peagam, Edward Charles, Plymouth; Sherrard Street, Deptford; Stafford Street, Lisson Grove.

Radcliffe, Reginald, Liverpool: Church Road, Stanley, West Derby; Walton on Hill, Co. Lancaster.

Shute, Edward Parker, Highgate; and Gower Place, Euston Square.

Squire, Charles James Flower, Bodmin, Cornwall.

Squarey, Andrew Tucker, Rock Ferry, Tranmere, Co. Chester.

Smart, David, late of Duthin, Denbigh, now of Yarmouth.

Taylor, Horatio T., Brazinose St., Manchester.; Fielden St., Manchester.

Wardle, Joseph Williams, late of Beeston, near Leeds; now of No. 1, Athol Place, Dover; Westbourne Grove, Middlesex; Saint Hellier, Jersey; and the City of Brussels.

White, James William, 19, Upper Cleveland Street, Fitzroy Square.

Applications to a Judge at Chambers, 27th Nov.

Ainsworth, Thomas, Blackburn.

Andrew, Richard Thomas Smith, 23, York Place, Chorlton-upon Medlock, Lancaster; 35, Lower Calthorpe Street; 8, Grenville Street; 14, Bedford Place, and 12, Compton Street East.

Andrews, J. H., 3, Cork Street, Burlington Gardens; Cowley Street, Westminster.

Burrell, Alfred, 1, Albert Place, Denmark Road, Camberwell; and 12, Smith Street, Walworth.

Brace, John, Lichfield; 79, Charlotte Terrace, Lambeth; Whitecross Street.

Bush, John Alderton, 3, Union Grove, Clapham.

Bacon, William, 58, York Road, Lambeth.

Browne, John Rogers, Nottingham.

Brown, Thomas, 80, Snow Hill; Three Tuns Passage; and Camberwell.

Bartley, Nehemiah, 5, Pritchard's Place, Hackney.

Bell, Richard, 3, Park Place, Loughborough Road, Brixton.

Collins, William, jun., 24, Islington Terrace, Islington; 29, Grove Street, Leamington; 6, Grange Terrace, Darlington, Durham.

Cooper, Samuel Nicholas, 81, Albany Street, Regent's Park; Southmolton Street; and Old Compton Street.

Dewae, John, York.

Etches, William M'Connell O'Neale, Machon Bank, near Sheffield.

Fisher, Edward Freeland, Long Melford, County Suffolk.

Howard, Thomas, Albion Road, Hammer-smith.

Hunt, Edward, Derby; Thringstone, Whitwick; Leicester and Melbourne.

Hicks, Leonard Hopwood, Paddock Lodge, Junction Road, Kentish Town, St. Pancras; 5, Gray's Inn Square.

Hill, Francis Canning, 37, Richmond Road, Barnsbury Park, Islington.

Johnson, John Fortin, 13, Temple Street, St. George's Road, Southwark.

Jesse, Robert, Taunton.

Jones, Charles Thomas, 35, Clarendon St., Clarendon Square; Woburn Buildings; Orange Street; and Stibbington Street.

King, Henry Wheeler, Bristol.

Lowe, Thomas Frederick, Warrington, Lancaster.

Lander, George Moseley, Gloster Street; Park Street; Park Terrace, Camden Town.

Meech, Francis Weston, 27, Kenton Street; and 51, Southampton Row.

Maule, Edward, Godmanchester.

Medland, William, late of Cambridge, now of Luton, County Bedford.

Minty, Richard George Pern, Catton; Great Russell Street; and Norwich.

Noy, Edward Hampton, Horsham.

Percival, George, Beckbury, near Shifnal, County Salop.

Porter, George Twynam, 10, Ecclestone St. South, County Middlesex.

Plowright, William, 21, Red Lion Square, Holborn.

Poole, Thomas, 16, Chandos Street, Bayswater.

Preston, Charles Abbott, Great Yarmouth.

Perkins, Charles, Eastmoor, near Wakefield.

Powell, Horatio Nelson, Cheltenham.

Rowles, George, S. S., 6, Elm Court, Gray's Inn Road; and William Street.

Smallbone, Thomas, Birmingham; and Cavendish.

Tench, James, Dudley, County Worcester.

Whiting, Charles David, Colchester; and Lincoln.

Waite, John Anthony, 5, South Square, Gray's Inn; Old Bond Street; Upper Gloucester Street; and South Square.

Windsor, O. R., 37, Chancery Lane; Surrey Street; and Langton Place South.

NOTES OF THE WEEK.

BUSINESS OF THE COURTS.

The proverbial dullness of Michaelmas Term has been more than justified by the experience of the past week. There is a very remarkable absence of new business in all the Courts. The only case which has come under discussion, exciting any public attention, is that of *The Queen v. Maria Manning*, in which the demand of the female prisoner, convicted of the murder of O'Connor, to be tried by a jury partly composed of foreigners, has been heard by the Court of Criminal Appeal, and decided with an unanimity and absence of all doubt, that can surprise no one who has considered the legal question involved in the application.

NEW RULES IN BANKRUPTCY.

Complaints have been made without any reasonable foundation, because the Bankrupt Commissioners have not already framed and promulgated rules for carrying the Bankrupt Law Consolidation Act into effect. It was obviously desirable, however, that the act should be in operation before the rules were settled. Indeed, until the machinery of the new act was set in motion it was impossible to ascertain exactly in what instances rules were required. We understand that two solicitors of great experience in bankruptcy have been requested, with the co-operation of the Incorporated Law Society, to state in the first instance what rules they deem necessary. The rules will subsequently be settled by all the London Commissioners, after consulting with their colleagues in the country, and they will finally be submitted to and approved by the Lord Chancellor.

HEALTH OF THE LORD CHIEF JUSTICE.

We understand that Lord Denman's medical advisers do not consider his Lordship's health sufficiently re-established to justify a resumption of the public duties of his office immediately; but his Lordship is in daily communication with his brother judges, in reference to the cases tried and discussed before him when he presided, a circumstance which considerably diminishes the inconvenience that might otherwise arise from the inevitable absence of the learned and esteemed head of the Queen's Bench, during the first week of Term.

TIME OF SITTING OF THE LORD CHANCELLOR.

The Lord Chancellor will not, as intimated on Nov. 3, take any fresh cause or motion after 3 o'clock, during the present sittings.

COURT OF QUEEN'S BENCH.—ORDER OF BUSINESS.

Mr. Justice Coleridge notified that the spe-

cial and crown papers would be taken on the regular days, and that the new trial paper would be taken on Mondays and Thursdays, after the Court had gone through the Bar for motions.

COURT OF EXCHEQUER.—ABSENCE OF COUNSEL.

The *Chief Baron*, after observing on the absence of counsel, intimated that in future the Court would proceed immediately with the public business, and that the parties interested must take the consequences attendant on the non-appearance of counsel.

ADMISSION OF SOLICITORS AT THE ROLLS.

The Master of the Rolls has appointed Tuesday, the 20th November, to swear in Solicitors, at 3 o'clock precisely, at the Rolls' Court, Chancery Lane.

The Common Law Admission must be left with the Secretary, at the Rolls' Office, on Monday the 19th.

RECENT DECISIONS IN THE SUPERIOR COURTS.**AND SHORT NOTES OF CASES.****Lord Chancellor.**

Wood and another v. North Staffordshire Railway Company. Nov. 2, 3, 1849.

INJUNCTION.—AWARD.

Injunction dissolved (reversing the judgment of the Vice-Chancellor Knight Bruce) by which a railway company was restrained from pulling down a bridge and building a new one some distance off, and making a road deviating from the old road, on the ground that such acts were neither contrary to the company's acts of parliament nor forbidden by the award between them and the plaintiffs, who were the owners of cotton mills near the bridge about to be pulled down.

The plaintiffs, Charles and Richard Wood, were owners of certain cotton mills at Sutton, near Macclesfield, immediately adjoining Sutton Bridge, and the defendants had, in consideration of the plaintiffs not opposing their bills in parliament, entered into an agreement binding themselves to pay such sums and do such acts as should be settled by arbitrators, or in event of disagreement by an umpire, the proposed railway being intended to go through and interfere with the plaintiffs' property. The arbitrators having failed to make any award, the umpire had awarded a sum of 15,000*l.* for the property taken, &c., and also provided that the defendants should make a good road or approach from or near Sutton Bridge to the plaintiff's mill. The company being about to pull down old Sutton Bridge and to construct a new road and bridge at some distance from

the plaintiffs' mills and deviating from the old road, an injunction had been obtained from the Vice-Chancellor Knight Bruce restraining such pulling down the old bridge and diverting the road. This appeal was therefore presented against that order.

Makins and Dickenson for the appellants; *Rolt, J. H. Palmer, and Townsend*, for the respondents.

The Lord Chancellor said, that the injunction had not been granted upon any infringement of the company's acts of parliament, but upon the violation of the spirit of the agreement between the parties. It did not, however, appear that the new road was in any way not in accordance with the award, parts of which seemed to contemplate such an alteration in the road to the plaintiffs' premises. The suggestion that the cutting off the communication with the old road would injure the plaintiffs' property, was merely one for which compensation might be sought, but was not within the terms of the award. The intended works were therefore neither a breach of the contract nor an infringement of the company's acts of parliament, and the judgment of the Court below must be reversed.

Nov. 2.—*Andrews v. Walton*—Stand over for service of notice of motion.

—2.—*Cohen v. Wilkinson*—Application refused to advance this cause in the list.

—2.—*In re Godolphin Mining Company*—Leave granted to present petition as to costs.

—2.—*Underwood v. Gee*—Appeal motion

against order of Vice-Chancellor of England, refused with costs.

— 3.—*In re Borough of St. Marylebone Banking Company*—Motion ordered to be struck out of paper.

— 5.—*Saintier v. Ferguson*—Injunction dissolved.

— 5.—*Follet v. Jeffreys*—Stand over to amend motion—order for the production of documents in the meantime dissolved.

— 3, 5, 6.—*Roberts v. Roberts*—Motion refused to discharge order of Vice-Chancellor refusing new trial of issue.

— 6.—*Cohen v. Wilkinson*—Motion to discharge injunction restraining the application of funds of a railway company to the execution of a portion only of their line, dismissed with costs.

— 6.—*Turner v. Turner*—Application refused with costs to rescind order of Vice-Chancellor of England.

— 6.—*In re St. George's Steam Packet Company, Ex parte Pim*—Motion discharged on the ground of irregularity in notice.

— 6.—*Clegg v. Fishwick*—Part heard.

Rolls Court.

Sturge v. Sturge and others. May 29, 30, 31, June 1, Nov. 5, 1849.

CONVEYANCE.—SETTING-ASIDE FOR FRAUD.

Where a conveyance of an estate was executed and the plaintiff had been misled by the suppression of material facts constituting his title thereto, and had acted without professional advice, such conveyance was set aside and a reconveyance ordered—the plaintiff to account for the money received.

THIS suit was instituted by the plaintiff, William Sturge, against Daniel Sturge, Tobias Walker Sturge, Thomas Buckland, and others, and sought a declaration that a deed dated October 15, 1841, had been unduly and improperly obtained from the plaintiff, and that it should be set aside and the lands comprised therein reconveyed to the plaintiff. It appeared that Wm. Mill, by his will in 1764, devised an estate at Chilworth in Wiltshire to his daughter Elizabeth and to her issue and to the heirs of her issue. The estate was, on the marriage of the daughter to Tobias Walker Sturge, conveyed to trustees in trust for the husband for life, then for the wife for life, and then to such uses and persons as she should appoint. Upon her death, in her husband's lifetime, in August, 1825, it appeared that she had, by her will, dated 12th February, 1821, appointed the estate to such of her four sons, Daniel, Tobias Walker, Samuel, and John, as should be living at her death, other than such as should by the death of her eldest son William become an eldest son, as tenants in common, subject, however, to the payment to her daughter Hester of one-fifth of the value of the estate. John died in the lifetime of the testatrix. The father settled on the plaintiff certain lands in Little Sodbury, Gloucestershire. The plaintiff

being unsuccessful in business, applied to his brothers for an advance of money, and under the belief that he was not entitled to any part of the property of his father or mother, executed the deed of October, 1841, whereby he conveyed the estate at Chilworth to his brothers in consideration of 950*l.*, which was alleged to be the value of one-fourth part. It was alleged by the plaintiff that he had not seen any draught of conveyance, that the deed was read rapidly over so that he was unable to understand its import, further than its being to carry into effect the agreement to convey his share in the estate. The plaintiff had acted without professional assistance and in ignorance of the title to the Chilworth estate, and his brothers, knowing that he was the tenant in tail of the estate, and that as Mrs. Sturge had not barred it, the state descended to him, had concealed that fact from him.

Turner and Cairns for the plaintiff; Bethell, Roupell, Walpole, Lloyd, Stinton, Smythe, Follett, De Gex, and Amyot for the defendants.
Cwr. ad. vult.

The Master of the Rolls said, that the plaintiff was without professional advice, and did not appear to understand the state of his own case, but had been misled by a concealment of material facts known to his brothers. The deed must therefore be set aside, and a reconveyance of the estate made to the plaintiff, who must, however, account for the money received.

Nov. 2, 3, 5.—*Cooke v. La Motte*—Order to try validity of bond at law, with injunction staying execution on judgment.

— 6.—*Robertson v. Shelton*—Stand over.

— 6.—*In re Rees*—Application to discharge order for taxation granted.

Vice-Chancellor of England.

James v. Smythies. Nov. 2, 1849.

NE EXEAT REGNO.—DISCHARGE.—SUPPRESSIO VERI.

A writ of ne exeat regno was discharged where it had been obtained upon a suppression of facts within the knowledge of the plaintiff who had obtained it.

THIS was a motion to discharge a writ of *ne exeat regno*, under which the defendant had been committed and obliged to put in bail. It appeared that the plaintiff, James James, had, by his affidavit upon which the writ was issued, sworn that the partnership with Henry Smythies, the defendant, was dissolved on May 16th last, and that the defendant had drawn out 1,100*l.* more than he was entitled to. By the defendant's answer to the bill, it appeared, however, that the said sum of 1,100*l.* was only the amount by which he had exceeded the plaintiff's drawings, and not more than he was entitled to, as was known to the plaintiff, who had since the dissolution received a sum of 1,400*l.* from one of the partnership clients.

Bethell and *Smythe* in support of the motion; *Welford* contra.

The Vice-Chancellor said that the plaintiff had suppressed material facts in obtaining the writ, and it must therefore be discharged as prayed.

In re Duke of Marlborough's Estates, Esparie Oxford, Worcester, and Wolverhampton Railway Company. August 2, 1849.

LANDS' CLAUSES' ACT.—PAYMENT OUT OF COURT.—TENANT FOR LIFE.

Where a sum of money was paid into Court by a railway company under the 8 Vict. c. 18, for the benefit of a tenant for life or other owner of the estate, as an indemnity for the making a road and building lodges, a reference was directed to ascertain what portion should be paid to the tenant for life for the expenses he would incur, and the residue was directed to be applied for the benefit of the owners of the estate.

THIS was a petition for the payment out of Court of a sum of 5,250*l.* which had been paid in under the 8 Vict. c. 18, for the expenses Lord Churchill, the tenant for life of the lands required for the purposes of the railway, would incur in making a new road from his residence to the nearest railway station, and for building new lodges. A sum of 1,100*l.* was also paid for the purchase of the lands in question. It appeared that the estate was limited to Lord Churchill for life, with remainder to his first and other sons in tail male.

Bethell and *Osborne* in support of the petition; *Malins* and *Bigg*, for the eldest son, contra, contended that their client, as tenant in tail, was entitled to a portion of the sum of 5,250*l.*

The Vice-Chancellor said that the sum of 5,250*l.* had been paid into Court for the benefit of the petitioner or other the owner of the estate, in consideration of the railway passing through the property and for making a new road. There was therefore a distinction between the sum to be paid to the petitioner personally and to the owner of the estate, and there must be a reference to the Master to ascertain the portion of the 5,250*l.* which ought to be paid to the petitioner for the expenses he would incur in making the new road and for building lodges, and the residue to be applied for the benefit of the owners.

Nov. 3.—*Attorney-General v. Christ Church, Oxford*—Reference to the Master to settle scheme for the settlement of a grammar school.

—6.—*Trench v. Harrison*—Exceptions to Master's report disallowed.

—6.—*Neate v. Pink*—Part heard.

Vice-Chancellor Knight Bruce.

Esparie Parbury, in re Direct London and Ekester Railway Company. August 3, 1849.

WINDING-UP ACT.—CONTRIBUTORY.

A motion was refused to strike out the name

of a party from the list of contributories under the 11 & 12 Vict. c. 45, where the allegation of fraud did not appear to be sufficiently supported.

THIS was a motion that the name of Mr. George Parbury might be directed to be struck out of the list of contributories of this company, under the 11 & 12 Vict. c. 45. It appeared from the admissions that the company was provisionally registered in May, 1845, and a prospectus issued stating that the capital was to be three millions, in 120,000 shares of 25*l.* each, and a deposit paid of 1*l.* 7*s.* 6*d.* per share; that Mr. Parbury applied for 100 shares, which were allotted to him, and on the 18th October he paid to the company's bankers 137*l.* 10*s.* as his deposit thereon, and received the bankers' receipt, but never signed the subscribers' agreement or parliamentary contract; and that although applications were made for upwards of 400,000 shares, not more than 60,000 had been allotted, and of these deposits had been only paid upon 23,495.

W. M. James, in support of the motion, contended that the whole scheme was a fraud, and that the payment of the deposit constituted no contract on Mr. Parbury's part, and that he was therefore entitled to recover back his money, citing *Wontner v. Shairp*, 17 Law J., C. P. 38; 4 C. B. 404.

Swanston and *Daniel*, contra.

The Vice-Chancellor. It did not appear that Mr. Parbury had been induced to take the shares by reason of the advertisements in the newspapers containing the alleged fraudulent misrepresentations, but without deciding whether he had been deceived or not, he must refuse the present motion.

Esparie Whiteway, in re Whiteway. Nov. 3, 1849.

ANNULING FIAT.—BANKRUPT'S OWN PETITION.

A fiat was annulled on the bankrupt's own petition with the consent of creditors where the application was unopposed. Quære, whether the 12 & 13 Vict. c. 106, affects the jurisdiction of the Court in annulling such a fiat where the petition is opposed?

THIS was a petition by a bankrupt to annul the fiat with the consent of the creditors. The petition had been served on the official assignee, but he did not appear. The Commissioner had not certified that the bankrupt had not been committed.

Shapter, in support of the petition, stated that the petition had been answered on the day that the 12 & 13 Vict. c. 106, (the Bankrupt Law Consolidation Act) came into operation, and was therefore within the exception in sect. 1,—“Except also as far as may be necessary for the purpose of supporting any proceedings taken, or to be taken, under and after the commencement of this act, upon any trading, act

of bankruptcy, petitioning creditor's debt, fiat, or other proceeding in bankruptcy before the commencement of this act."

The Vice-Chancellor declined to give any opinion whether the case came within the act; but, as the petition was unopposed, made the order as prayed.

Nov. 5.—*Padley v. Lincoln Water-works Company*—Cur. ad. vult.

— 6.—*Riley v. Garnet*—Stand over.

Vice-Chancellor Wigram.

Nov. 2.—*Brogden v. South-Eastern Railway Company*—Order for delivery of certain certificates of the engineer.

— 2.—*Rigby v. Great Western Railway Company*—Stand over.

— 3, 5.—*Vincent v. Bishop of Sodor and Man*—Cur. ad. vult.

— 6.—*Reynell v. Sprye, Sprye v. Reynell*—Judgment upon validity of certain deeds.

— 6.—*Coope v. Carter*—Cur. ad. vult.

— 6.—*Dixon, clerk, v. Pyner*—Part heard.

Queen's Bench.

Rolfe v. Learmouth. Nov. 3, 1849.

SUGGESTION.—COSTS.—FIXED PLACE OF BUSINESS.

A rule was refused to enter a suggestion to deprive the plaintiff of costs in an action for 2l. 15s. where the debt or was merely an attendant on the Lord Chancellor, as deputy sealer, and had no fixed place of business, on the ground that under the 60th section of the 9 and 10 Vict. c. 95, a plaintiff could not have been entered in the County Court for the district.

THIS was a motion to enter a suggestion on the record to deprive the plaintiff of his costs in an action to recover the sum of 2l. 15s. under the 9 & 10 Vict. c. 95, s. 129, on the ground that the plaintiff ought to have proceeded in the Westminster County Court, in which district the defendant carried on his business, and not before the under-sheriff of Middlesex. It appeared that the defendant was deputy sealer of the Court of Chancery, and attended the Lord Chancellor in rooms adjoining the Court of Chancery, and the House of Lords when the Lord Chancellor sat judicially, and that at other times he attended at the Great Seal Patent Office in Quality Court, Chancery Lane.

D. D. Keane, in support of the application, contended that as the places were within the jurisdiction of the Westminster County Court the venue ought not to have been laid in the Sheriff's Court.

The Court said, that the 68th section of the 9 & 10 Vict. c. 95, required the defendant to dwell or carry on business, or to have done so at some time within six calendar months, in order that the summons might issue in the County Court for the district. Here, however,

the defendant is a mere attendant on the Lord Chancellor, without any fixed place of business, and the case is not therefore within the act of parliament, and the application must be refused.

Nov. 2.—*Duke of Brunswick v. Harmer*—Rule nisi for new trial.

— 3.—*Sinclair v. Reed*—Rule nisi to enter verdict for defendant on the ground that the words relied on only pointed out a particular mode of payment.

— 3.—*Melhuish v. Collier*—Rule nisi to set aside verdict on the ground that the plaintiff had given evidence at the trial to damage that of his own witness.

— 3.—*Bailey v. Bracebridge*—Rule nisi to set aside judge's order staying proceedings in actions at law.

— 3.—*Macnamara v. O'Connor*—Cur. ad. vult.

— 3.—*Jonas v. Smith*—Rule nisi for new trial on the ground that the whole consideration for the promise stated in the declaration was not set forth.

— 3.—*Pratt v. Hasbury*—Rule refused for new trial on the ground of amendment in the pleadings.

— 3.—*Cobbald v. Bremer*—Rule to enter nonsuit on leave reserved, refused, verdict to stand for the plaintiff on the first count.

— 5.—*Charles v. Parkes*—Rule nisi for new trial on the plea of insufficiency of presentment of bill.

— 5.—*Westaway v. Frost*—Cur. ad. vult.

— 5.—*Farmer v. Thorne*—Rule nisi to enter nonsuit.

— 6.—*Crowther v. Farrer*—Rule nisi to set aside verdict and enter nonsuit, or in arrest of judgment.

— 6.—*Sales v. Blaine*—Rule nisi to set aside nonsuit.

— 6.—*Smith v. Archibald*—Cur. ad. vult.

Queen's Bench Practice Court.

(Coram Mr. Justice Patteson.)

Anon. Nov. 3, 1849.

STRIKING ATTORNEY OFF THE ROLL.—ENLARGEMENT OF RULE.

The Court enlarged to the first day of Hilary Term, a rule calling on an attorney who had been convicted of a felony, to show cause why he should not be struck off the Roll—the imprisonment, although computed to end on Sunday, having been terminated on the Saturday—and the rule consequently could not be served on the attorney.

F. Robinson applied on behalf of the Incorporated Law Society, to enlarge the time limited in a rule calling upon an attorney to show cause why he should not be struck off the Roll of Attorneys. It appeared from the affidavit in support of the application, that at the time of making the original rule the attorney was a prisoner in the House of Correction at Clerkenwell, undergoing a sentence of imprisonment

passed upon him at the Central Criminal Court, on a conviction for felony; that a clerk of the Law Society had been repeatedly refused admission by the governor of the prison, for the purpose of serving the prisoner with the Rules of Court made in this matter. It was then stated that a clerk had applied at the House of Correction on Monday, 18th June last, being the day on which it was believed that the imprisonment would expire, for the purpose of serving him with a copy of the Rules on leaving the prison, but that the term of imprisonment being computed to expire on Sunday, June 17, he had been discharged on Saturday, June 16. The clerk had also inquired at the House of Correction, and at the office of the attorney to whom the attorney had been articulated, and of the prosecutor of the indictment against him, and also at the office of the attorney of one of his creditors, for the purpose of ascertaining his residence since his discharge, but without effect.

The Court granted the application, enlarging the rule until next Term.

Nov. 3.—*Regina v. Inhabitants of St. Pancras*—Rule nisi for mandamus on defendants to elect 31 Commissioners under the Lighting and Paving Act—the day for election this year having fallen on a Sunday.

—5.—*Ackworth v. Sheppard*—Rule nisi for prohibition to judge of County Court.

—5.—*Regina v. Justices of Sussex*—Rule nisi for mandamus to issue warrant for poor-rate.

—5.—*Aines v. Stalles*—Rule nisi for attachment for contempt.

—6.—*Lawrence and others v. Hughes*—Cur. ad. val.

Court of Common Pleas.

Joy v. Bruce. Nov. 2, 1849.

ACTION ON BILL OF EXCHANGE.—PUIS DARREIN CONTINUANCE.

The defendant in an action on a bill of exchange appeared in person, and pleaded non-acceptance. He afterwards handed over a bill of another person to a bill discounter, who said it was sufficient to settle with him, and value was obtained thereon. He then obtained his discharge under the Insolvent Act, and inserted the former bill in his schedule. The action being continued, the defendant obtained a judge's order to plead such discharge on payment of costs, which, however, he did not comply with. On the trial an application was refused to plead such discharge. A motion in arrest of judgment was refused, on the ground of the application being too late, and that there was no other plea on the record than that of non-acceptance, which by the judge's order the defendant had admitted.

This was a motion in arrest of judgment or for a new trial in an action on a bill of exchange for 20l. It appeared that it was an ac-

commodation bill, and had got into the hands of one Rosetti, a bill discounter, who, in January commenced this action in the name of Alfred Joy. The defendant was unable to ascertain the plaintiff's address, and to avoid judgment by default, pleaded non-acceptance of the bill. He afterwards saw Rosetti, to whom he handed a promissory note for 30l., from one Woodman, and Rosetti obtained goods to the value thereof. The defendant had also on the 15th May obtained his discharge under the Insolvent Debtors' Act, having sent due notice of his petition to Rosetti, and inserted the 20l. bill in his schedule. The action was, however, proceeded with, and the defendant then obtained a judge's order to plead his discharge *puis darrein continuance*, upon payment of costs since the plea, but did not pay the costs, amounting to 6l. 10s., on the ground that they were excessive, nor proceed under the order. At the trial at Hertford, the last Summer Assizes, the Lord Chief Baron refused to permit the defendant upon an affidavit to plead his discharge, and the acceptance having been admitted under the judge's order, a verdict was found for the plaintiff.

The defendant appeared in person in support of the motion.

The Court said, that the only plea on the record was, that the defendant did not accept the bill, and in the absence of any proper plea, the Court could not take notice that the defendant had been substantially paid. Then as to his discharge under the Insolvent Act, it appeared that although he had obtained an order to plead it as a defence to the action on certain terms, he had not done so, on the ground that the bill of costs was extortionate, which was, however, no ground, for he might have had it taxed by the proper officer. A similar application had been made at the trial and refused, on the ground that it was too late, and the Court could not now grant relief, as both the grounds of application had failed. The defendant had appealed to the justice of the Court, but justice must be administered according to the rules of law. The Court had no power to grant equitable relief, irrespective of the rules of law.

Nov. 2.—*Doe dem Church v. Pontifex*—Rule nisi to set aside verdict on leave reserved.

—5.—*Nind v. Arthur*—Rule nisi to tender bill of exceptions for the purpose of being sealed, with a view to new trial, upon the death of Mr. Justice Coltman.

—5.—*Barnewall (P. O.) v. Sutherland*—Rule nisi for new trial.

—6.—*Spear v. Ward*—Rule nisi for new trial.

—6.—*Morris v. Marsden*—Rule nisi on leave reserved to set aside verdict, or for non-suit, or to reduce damages.

—6.—*Parker v. Pinner and another*—Rule refused for new trial.

—6.—*Munden v. Duke of Brunswick*—Rule nisi for leave to shew to quash return to writ, and to amend it by returning *nulla bona*.

Court of Exchequer.

Croome v. Fairbairn and another. Nov. 6, 1849.

ENGINEER.—EXCESSIVE DAMAGES.—NEW TRIAL.

Semble, that an engineer is not entitled to be paid for the erection of furnaces and the manufacture of tools and implements necessary for the making of certain fittings, &c., to a steam vessel, and therefore where a verdict was passed for more than was proved on the trial to have been paid for similar work to another engineer, a rule nisi was granted for a new trial.

THIS was a motion for a new trial on the ground of misconception of evidence by the jury, and the verdict being perverse. It appeared that the defendants were shipbuilders, and had undertaken to build one of two steam vessels for Government. They employed the plaintiff, who had engineering works at Bristol, to make slide pieces and other metal fittings required for screw propelled steamers. The plaintiff, having charged 2,280*l.* 10*s.* for such work, the defendants refused to pay it on the ground that it was excessive. At the trial before Pollock, L. C. B., at the London Sittings after last Trinity Term, evidence was adduced showing that 1,200*l.* was sufficient, which was the sum paid to another engineer for similar fittings to the other vessel. The plaintiff, however, claimed for the expenses attendant on the erection of furnaces and the manufacture of certain tools and implements required for the work. A verdict having passed for the plaintiff for 450*l.* damages, ultra the sum of 1,000*l.* paid into Court, this application was made.

The *Attorney-General* in support of the rule. The Court granted a rule for a new trial. If a charge for implements could be maintained, so might a claim for scientific education.

Nov. 2.—*In re Hammersmith Rent-charge*.—Rule to review judge's order disallowing the costs of inquiry.

— 2.—*Bryan v. Ritchie*.—Rule nisi to enter

verdict for plaintiff on payment of costs of trial and of this application.

— 3.—*Grieve, administratrix, v. Milton*.—Rule nisi to set aside nonsuit and enter verdict for 300*l.* upon leave reserved.

— 3.—*Hartley and another, v. Great Northern Railway Company*.—Rule refused to enter verdict for plaintiffs on the third issue.

— 5.—*Nottidge v. Ripley*.—Rule nisi for new trial.

— 6.—*Hardy v. Tinge*.—Rule nisi for new trial if defendant would not consent to reduce damages to 20*l.*

— 6.—*Bell (P. O.) v. Earl Talbot*.—Rule nisi to set aside verdict or for a new trial.

Court of Bankruptcy.

(Coram Mr. Commissioner Goulburn.)

In re John Morgan. Oct. 26, 1849.

THIRD CLASS CERTIFICATE.

On a fiat issued at the bankrupt's own instance, before the 12 & 13 Vict. c. 106, where the bankrupt commenced business without capital, had not kept proper books, and there were no assets, he was held to be entitled only to a third-class certificate at the end of six months, though no creditor opposed.

THE bankrupt was a stock and share-broker. His debts amounted to 1,000*l.* and as yet no assets had been received. He had commenced business without any capital. The fiat had been issued at his own instance before the recent act, and he now applied for his certificate.

Mr. *Laurance* urged the grant of a first-class certificate.

The *Commissioner* observed, that there being no assets, the bankrupt, if the fiat had not been previously issued, could not under the new act have obtained any protection. He had not kept proper books. As there was no creditor to oppose, he might at the end of six months have a certificate of the third class, with protection from arrest in the interim.

BUSINESS OF THE COURTS.

COMMON LAW CAUSE LISTS.

Exchequer of Pleas.

DEMURRERS.

New Cases entered Michaelmas Term, 1849.

Meanley v. Dawson.

Bartholomew v. Dell.

Graham and another, assignees, v. Gibson and another.

Grove v. Withers.

Armitage v. Coates, jun.

Jennings v. Holdsworth.

Milvain v. Mather.

Hutchinson, admix. v. York, Newcastle, and Berwick Railway Company.

Coode v. Thomson.

Morgan and others, assignees, &c. v. Price.

Horsfall and others v. Case.

Chapman and another v. Milvain.

Potter v. Warburton.

Hutchinson v. Read and others.

Bignell v. Harpur, exor., &c.

Groom and another, exors., &c. v. Groom and another, extrin., &c.

Lewis v. Brown.

Farmer v. Burbidge and another.

Smith v. Hornidge.

SPECIAL CASES.

New Cases entered Michaelmas Term, 1849.

Burdie v. Mann, pursuant to award.

Doe d. Dean and Chapter of the Cathedral Church of St. Peter in Exeter v. Phelps, by order of Nisi Prius.

Carr v. Mostyn, by order of Nisi Prius.

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SATURDAY, NOVEMBER 17, 1849.  
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THE ENCUMBERED ESTATES' ACT.

AN experiment of great magnitude and importance is now in progress in Ireland, interesting not merely to the general public and legal profession in that country, but which may possibly exercise—and at no very remote period—a considerable influence over the fortunes and prospects of persons having no immediate connexion with the proprietors of landed property in the sister kingdom. We allude to the commission, constituted under the act 12 & 13 Vict. c. 77, “to facilitate the Sale and Transfer of Encumbered Estates in Ireland.” This act obtained the Royal Assent on the 28th of July last, and with a diligence not very common in such matters, but no doubt very praiseworthy on the part of all concerned, Commissioners were appointed, general rules for regulating proceedings under the act—framed by them, approved by the Privy Council in Ireland and enrolled in Chancery, together with a separate code of forms and directions under the authority of the Commissioners—were promulgated, and the Court was actually opened for purposes of business on the 24th October.

The Commissioners appointed under the act “during her Majesty’s pleasure,” are three in number, one of whom (Mr. Baron Richards) has a salary of 3,000*l.* per ann., and each of the other two Commissioners (Mr. Langfield and Mr. Hargreave) has a salary of 2,000*l.* a year. At the first sitting of the Court, it was expressly intimated by the Chief Commissioner, that although by analogy to the practice of the Superior Courts, any party to a proceeding might act for himself and on his own behalf, the Commissioners had resolved not to sanction the appearance of any unqualified person before them as the representative of a suitor: in other words, that the privilege of audience

should be limited to counsel and solicitors, unless when parties appeared in person. So far there is reason to hope that the experiment will have a fair trial.

A premium is held out to parties to proceed under the act, by providing that no fees shall be payable to any officer of the Court in respect of any proceeding under the act, unless where parties require and take copies or extracts, for which the moderate charge of three half-pence per folio is allowed to be taken. The importance of the adoption by the legislature of the principle, that the expenses of the Court should be defrayed out of the national funds, and not drawn from the pockets of the suitors, cannot be exaggerated. If a similar principle were applied, as we have long contended it should be, to the Courts of Law and Equity, both in England and Ireland, the creation of new tribunals might perhaps have been dispensed with. At all events, one of the most obvious defects of the existing system, and that which occasions the most general and well-grounded complaint, would have been put an end to. It is wholly beside our present purpose to speculate upon the probable success of a measure which proposes to supersede to a great extent the established jurisdiction of the Courts of Equity in Ireland, and substitute a summary mode of proceeding, in a class of cases with respect to which it has hitherto been a pretty generally received opinion, that careful, minute, and even tedious investigation could not justly be dispensed with. It must have struck every one who has considered the subject, that whatever may be the facilities afforded by the law for the sale of encumbered estates in Ireland, there are circumstances connected with the condition of that country particularly, and indeed with the condition of those interested in agricultural pursuits in all parts of the

United Kingdom, which at the present period may render it extremely difficult to find any large number of capitalists ready and willing just now to invest their capital in Irish lands. The inducements and advantages held out to them, under the operation of the act of last Session, are forcibly stated in an address made at the opening of the New Court, by the Chief Commissioner, who, unlike certain Commissioners nearer home, evinces a very laudable anxiety to give full effect to the intentions of the Legislature. The learned Baron is reported to have given the following reasons, why persons desirous of investing capital in a profitable manner, should not refrain from purchasing land sold under the orders of the new Court :

"First," says he, "they will have a clear and indefeasible title not depending upon the preservation of any ancient deeds or charters, or on the accuracy of searches, or on the opinions of counsel; but deriving its validity from the statute under which we are acting; secondly, they will have a clear possession, free from all claims of tenancy, save those subject to which the property is expressly sold; but chiefly the purchaser under our Court will obtain the benefit of his contract at once, and not be delayed, as is sometimes the case, for years, not knowing, up almost to the latest moment, whether his purchase is to be on or off."

It is impossible not to admit that great encouragement is thus held out to purchasers; but assuming the advantages promised to be fully secured, the expediency of an investment must mainly depend upon the state of the country and the market value of agricultural produce.

In the conduct of sales under the 12 & 13 Vict. c. 77, the Commissioners have announced their intention of adopting a rule, which it is admitted is essentially at variance with the established practice in Courts of Equity, both in England and Ireland. By one of the general regulations promulgated by the Commissioners, they have in effect concluded themselves from opening any sale by reason of an advance in the bidding. The considerations which induced the Court to lay down this principle, are thus adverted to in the address of Baron Richards, already referred to:—

"Many persons, I dare say, will disapprove of the principle of that rule, but we do not expect to please all parties, we can only say that the principle of that rule engaged our most earnest and anxious consideration: and, upon the deepest reflection, we arrived at the conclusion that the practice of opening sales from time to time, by reason of an advance in

the biddings, was calculated to damp very much the ardour of *bona fide* purchasers, to delay the final completion of the sale and winding up of the cause; and, in fact, more or less to damage all parties interested in the case. It is essential, however, that this most important alteration in the mode of procedure in respect to the sales of property should be very generally known, and we trust it will obtain universal publicity; on the other hand, to guard against a collusive or fraudulent attempt to have property knocked down at a gross undervalue, we have reserved to ourselves a power by the 15th rule to adjourn the sale of any lot, if, in our opinion, the highest price offered is clearly inadequate. This is a power which I apprehend we shall very seldom have occasion to exercise, and, most likely, never shall exercise, except where we have reason to suspect something in the nature of fraud or contrivance in the case. It is right, however, that we should have such a power, to be used or not as the circumstances of the case may appear to render necessary."

The practical experience of many of our readers will enable them to estimate the adequacy of the grounds stated by the learned judge, for departing from the established practice. If the reasons given be sufficient, they are equally, perhaps more clearly, applicable to sales of land, under the authority of the Courts of Equity, than to sales directed by the newly-established tribunal. At all events, the manner in which the new system operates in this as well as in many other equally important particulars, is well deserving of inquiry and attention.

The limited application of the act, (to say nothing of the space it would occupy,) precludes us from including it in the list of Statutes relating to the Law, printed without abbreviation in these pages, but we subjoin a summary of its provisions which it will be seen extend to 55 sections.

12 & 13 VICT. c. 77.

An Act further to facilitate the sale and transfer of Encumbered Estates in Ireland.

The act contains the following clauses:

1. Three Commissioners to be appointed under sign manual, and to be styled "The Commissioners for Sale of Encumbered Estates in Ireland."
2. Commissioners to have a Common Seal.
3. Two Commissioners to be a quorum.
4. Power to Commissioners to appoint and remove secretary, clerks, &c.
5. All appointments under the act (including Commissioners) limited to five years.
6. Salaries of officers to be paid out of monies provided by parliament.
7. Commissioners not to sit in the House of Commons.
8. Oath of Commissioners.
9. Commissioners to frame and promulgate forms of application and directions.

10. Commissioners to make general rules regulating proceedings under the act, which rules are to be laid before the Privy Council of Ireland, and when confirmed to have the force of an act of parliament. The rules may be altered, but no fees to be payable in respect of any proceedings under this act, except for copies or extracts which when required shall be paid for at the rate of three halfpences for ninety words.

11. General rules to be laid before parliament.

12. Power to Commissioners to summon witnesses, &c., and to enforce attendance and production of documents, as in the Court of Chancery.

13. Power to Commissioners to proceed upon affidavits, and to appoint persons to take affidavits and examinations.

14. The enforcement of orders upon persons resident in England is thus provided for:— "That every order made by the Commissioners under this act, a copy whereof shall be certified under their seal to the High Court of Chancery in England, may be enrolled in like manner and enforced by the like process as an order for payment or for accounting for money made by the High Court of Chancery in Ireland, a copy whereof is exemplified and certified to the Court of Chancery in England under the Great Seal of Ireland, may be enrolled and enforced under the 41 Geo. 3, c. 90."

15. Commissioners to be a Court of Record and have the jurisdiction of a Court of Equity, and may refer any inquiries, &c., to any one Commissioner.

16. Where land, or lease of land, in Ireland is subject to incumbrance, owner may apply to Commissioners for a sale.

17. Incumbrancer may also apply to Commissioners for a sale of the whole or part for the purpose of discharging the incumbrances.

18. Where previous application for a sale has been dismissed by any competent tribunal, no fresh application by same party to be entertained until costs of previous application paid.

19. Declares where land or lease is not to be deemed subject to incumbrance.

20. When incumbrance subject to limitations, the first person entitled to make application.

21. Commissioners, upon application for sale, may, after notices and hearing, direct a sale.

22. Commissioners not to make order for sale on application by incumbrancer, where the interest and annual payment on charges do not exceed half the net income.

23. Tenancies to be ascertained and dealt with. Sale may be made, subject to annual charge, and subject to leases, underleases, &c.

24. Sale, to be under the direction of the Commissioners, whose execution of conveyance or assignment shall be sufficient without execution by any other party.

25. Payment of purchase-money into the

Bank of Ireland, to discharge the purchaser from liability as to the application of the money so paid.

26. Where an incumbrancer purchases, the Commissioners may authorise payment into the bank of balance of purchase-money, after retaining amount of incumbrance.

27. Declares what shall be the effect of a conveyance executed by the Commissioners.

28. Provision saving rights of common, rights of way, or other easements.

29. Commissioners may order delivery or counterparts of leases, &c., affecting the land, and direct the sheriff to put the purchaser in possession.

30. Application of purchase-money. Payment of costs and expenses. Satisfaction of incumbrances and charges according to priority. Payment of surplus to owner, &c. Appointment of trustees when necessary.

31. Money paid into bank may be invested in funds.

32. Power to Commissioners, upon appointment of trustees, to provide at same time for appointment of new trustees on any event.

33. No payment not being in full to affect right of incumbrancer for balance, and no payment in respect of any incumbrance to affect remedy over, unless specially ordered.

34. Commissioners may make provision as to incumbrances, charges, &c., to facilitate sales, and also regulate the distribution of the purchase-money.

35. Power to Commissioners to order money to be paid into the Courts of Chancery or Exchequer in Ireland, or the Court of Chancery in England, where the case may require.

36. Lands included in different applications and different interests in the same land may be included in the same sale.

37. If land sold shall be subject to a lease comprising other land, or if part of lease in perpetuity be sold, Commissioners may apportion the rent.

38. Provision for minors, lunatics, idiots, married women, and persons under disability.

39. Proceedings not to abate by death, or change or transmission of interest.

40. Commissioners to have full power as to giving or withholding costs, and as to the persons by whom, and the funds out of which, the same shall be paid, and may say that the same as they think fit.

41. An order for sale under this act may be made notwithstanding a pending suit or decree for sale.

42. After order by Commissioners for sale, proceedings for a sale under decree to be stayed, and pending proceedings for a sale under this act, no proceeding at law or in equity to be commenced by owner or incumbrancer, without leave of the Commissioners.

43. On application for sale of an undivided share, or after sale, Commissioners may, on application of party interested, and giving notices and hearing parties, make order for partition.

44. On application for sale or after sale,

Commissioners, on application of party interested, may order an exchange of lands.

45. Partition may be made of land where shares are not subject to be sold under this act.

46. Exchanges may be made of lands not subject to be sold under this act.

47. Power to Commissioners to order division of intermixed lands not subject to be sold under this act.

48. Notices of partitions, exchanges, and divisions to be given by public advertisement.

49. Conveyance, assignment, and orders for partition, exchange, or division and allotment, under seal of Commissioners, to be conclusive evidence that previous proceedings were regular, and not to be impeached for informality.

50. Proceedings before Commissioners not to be restrained by injunction or prohibition, nor removable by certiorari, nor can they be required by mandamus to take any proceeding under this act. Commissioners or their officers not to be liable for acts done *bona fide* in the supposed exercise of the powers of this act.

51. Orders may be reviewed by Commissioners, and an appeal with their consent, but not otherwise, to the Judicial Committee of the Privy Council of Ireland.

52. Officers constituting the Judicial Committee enumerated.

53. Penalty for false swearing before Commissioners or persons appointed by them.

54. Construction of terms "land," "estate," "lease," "lease in perpetuity," "church or college lease," "incumbrancer," "possession," "owner," "person and owner," "Commissioners," and "Commissioners of Her Majesty's Treasury," as used in this act.

55. Act to extend to Ireland only, unless where specially provided.

SCHEDULE.—Form of conveyance on sales by Commissioners, to be used with such variations as the circumstances may appear to the Commissioners to require; and form of certificate of payment to be indorsed or written at the foot of conveyance or assignment.

PRACTICE IN BANKRUPTCY.

TRADER DEBTOR'S SUMMONS.

In a late number, (*ante*, p. 23), when discussing the practical operation of the new Bankrupt Law Consolidation Act, the construction of the 79th section, as to the bond which a trader debtor who is summoned under that section, and deposes to a good defence upon the merits, may be required to give, was especially adverted to, and it was observed, that the question, whether it was imperative or only discretionary upon the Commissioner to require such a bond, had been raised but not yet determined. Shortly after the publication of these remarks, the precise question then

suggested came before Mr. Evans, the Senior Commissioner, in two distinct cases, the names of which, for obvious reasons, we refrain from giving; and the view which the learned Commissioner took of the provisions referred to, is clearly indicated by the course he then pursued. In both cases, he directed the attorney of the party deposing to a good defence, to put on paper a concise statement of the grounds upon which the alleged debtor supposed he had a good defence to the demand of the summoning creditor. The statement, so prepared, was handed up to the Commissioner, without being shown to the solicitor for the summoning creditor, and if the learned Commissioner, upon perusing this statement, (which, it may be remarked, was not made on oath), was satisfied that there really existed any ground for supposing there was an answer at law or in equity to the creditor's demand, he declined to require any bond to be given. In both the cases brought before Mr. Commissioner Evans, he refused the application on the part of the creditor to require the alleged debtor to enter into a bond. Perhaps, in the absence of any more definite directions in the act as to the course to be pursued, that pointed out by Mr. Commissioner Evans is the least inconvenient mode of enabling a Commissioner to obtain materials for the exercise of his discretion. It must be admitted, however, that the consideration of an ex parte statement not made under the obligation of an oath, and not disclosed to the adverse party, does not afford the most satisfactory materials for the exercise of judicial discretion.

In a subsequent and more recent case before Mr. Foulblanque, that learned Commissioner decided, that it was not imperative on the Commissioner to direct a bond to be given, but that he would expect the creditor to satisfy him that such a security was required.

In addition to what was stated in our last number as to the promulgation of new rules, we may add, that on the first day after the act 12 & 13 Vict. c. 106, came into operation, namely, the 12th October, the Commissioners agreed to a general rule, (subsequently approved by the Chancellor,) that all existing rules should continue in force so far as they are applicable to the altered state of the law.

THE LAW REVIEW.

THE new number of this work contains twelve articles :

1. On Settlements of Land—their advantages and disadvantages.

2. International Law—its nature, limits, and distinctive character.

3. Lunacy, comprising a review of the Letter of the Commissioners to the Lord Chancellor, on their duties and practice under the 8 & 9 Vict. c. 100.

4. Chancery Reform in Calcutta.

5. The Legislation of 1849, comprising an able synopsis of the Statutes classified under the several departments of our Jurisprudence.

6. The difficulties of a Law Reformer, being a very ample review of Mr. à Beckett's pamphlet upon the Administration of the Estates of Deceased Persons.

7. Naval Prize—a continuation of a former article on the Law relating to the capture of ships.

8. The management of Property in Chancery, reviewing the Report of the Select Committee on Receivers in Ireland, and therein of matter bearing upon the English Courts of Equity.

9. The New Bankruptcy Consolidation Act, with a summary of the alterations effected in the Law.

10. Capital Punishment, including the Papers of the Law Amendment Society on that subject.

11. Tenant-rights, comprehending a full consideration of the state of the law and the policy of proposed alterations.

12. Law-making Machinery, and therein of Lord Brougham's noted Letter to Sir James Graham.

Several of these topics have been fully stated and discussed in the *Legal Observer*:—particularly the Legislation of 1849—the Consolidation of the Law of Bankruptcy—Chancery Reforms—the Lunacy Commissioners—Law Making and Digesting—and Law Reform in general. We shall take a fitting opportunity to discuss some other subjects comprised in the pages of our learned contemporary.

QUESTIONS AT THE EXAMINATION.

Michaelmas Term, 1849.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any and what law lectures?

II. COMMON LAW, AND PRACTICE OF THE COURTS.

5. State some of the causes of action at common law.

6. In what cases must notice be given, and for what length of time before commencing an action?

7. Mention the several times of limitation of actions by statute, and how the effect of the statute may be barred.

8. What is the rule with respect to documents to be produced on a trial before incurring the expense of calling witnesses to prove them?

9. In what cases will secondary evidence be received, and what proof must previously be given?

10. What is the law now with respect to the competency of witnesses who possess an interest in the subject matter in issue?

11. State the mode of enforcing the attendance of a witness, and the consequence of his non-attendance.

12. In what circumstances will a new trial be granted, and when will it be granted only upon payment of costs?

13. What is now the practice where the record and the evidence are at variance?

14. What is the difference between a warrant of attorney and a cognovit, and what is required to give validity thereto?

15. State the different kinds of writs of execution, and the property which may be taken under each.

16. What is the course of proceeding under the Interpleader Act?

17. What are the steps to be taken in an action of ejectment before the cause is at issue?

18. When should an application be made to set aside an award under an order of *nisi prius* or an agreement of reference respectively?

19. In what cases is a plaintiff not entitled to costs?

III. CONVEYANCING.

20. Mention the difference in acquiring estates by descent and by purchase?

21. Set forth the proper words for creating estates in fee simple and in tail, respectively?

22. How may a joint tenancy and tenancy in common be respectively created and severed?

23. What are the usual powers of a tenant for life over the estate?

24. State the practice in case a vendor is entitled to retain the title deeds, as to what the purchaser may require, and at whose expense?

25. What is understood by the term voluntary settlement? In whose favour, and on what grounds, may it be set aside?

26. What are the vices, if any, in which a bond or covenant to resign a living, is deemed legal?

27. At what place must the title-deeds be produced for examination; and where the vendor and the solicitor reside at a distance from the premises, who must bear the extra expense of the examination?

28. In what manner can real property be settled to charitable uses?

29. What covenants should be inserted in a mortgage of leasehold houses, and particularly for the protection of the mortgagee against the covenants in the original lease?

30. What precaution should a second mortgagee take to preserve his priority over a third mortgagee?

31. Where a lease contains a covenant by the lessee to keep the premises in repair, damage by fire excepted,—what are the rights and liabilities of the lessee in case the premises are destroyed by fire?

32. What persons are incapable of making a will?

33. What is the consequence of the attestation of a will by a party interested as a devisee or legatee?

34. Where a person dies intestate, leaving a wife, brothers, and sisters, and children of a deceased brother, how is his property distributed, and who is entitled to administer?

IV. EQUITY AND PRACTICE OF THE COURTS.

35. Describe the principal steps in a suit.

36. When can a cause be set down for hearing?

37. State some of the proceedings necessary to be taken in the Masters' office.

38. How is evidence taken in the Court of Chancery?

39. What are some of the principal "Interlocutory proceedings" usually taken in a cause?

40. When does the Court grant an order appointing a receiver?

41. How would you proceed to appeal against an order or a decree?

42. State the general rule as to parties to a suit. Is the rule ever, and when, relaxed; and to what extent?

43. State some of the remedies afforded by a Court of Equity which cannot be obtained in a Court of Law?

44. What are the several parts to a bill in equity?

45. What are the several kinds of bills?

46. What are the several kinds of process in Chancery, and the mode of service respectively?

47. How is an appearance to be entered, and when? and what is the mode of enforcing an appearance and an answer to a bill?

48. In what cases will the Court grant an injunction, and what is the rule with respect to the facts which ought to be stated?

49. State the several kinds of defence to a suit in Chancery.

V. BANKRUPT AND PRACTICE OF THE COURTS.

50. State generally the course of proceeding under the new act for consolidating the Bank-

rupt Law, in order to obtain an adjudication in bankruptcy.

51. Has there been any alteration made by the new act, and if so, what, in the amount of the petitioning creditor's debt to found an adjudication?

52. What are the facts which a solicitor should ascertain before applying to make a trader bankrupt?

53. Will an adjudication in bankruptcy be granted when its object appears to be to effect the dissolution of a partnership; or to avoid the payment of an annuity; or the performance of the covenants of a lease; or the completion of a purchase?

54. To what notice, if any, is a trader entitled before he is declared bankrupt; and when and how can he dispute the adjudication?

55. What effect has the death of the bankrupt at any, and what time during the proceedings on an adjudication in bankruptcy?

56. What acts of buying and selling constitute a sufficient trading to support an adjudication?

57. What instances of *selling* will not constitute a trading within the Bankrupt Law?

58. State the means by which a trader, since the abolition of arrest on *mesne proans*, can be compulsorily made a bankrupt?

59. What property in the possession of a bankrupt at the time of the adjudication does *not* pass to the assignees?

60. Within what time, and in what circumstances, are transactions with a trader, after an act of bankruptcy, liable to be set aside by an adjudication of bankruptcy?

61. What is the law with respect to the examination of the bankrupt and his wife?

62. In what cases, and by what means, may debtors to the bankrupt's estate be required to attend the Commissioners, to show cause why the debt claimed should not be paid?

63. Is there any, and what, recent alteration in the law relating to the bankrupt's certificate?

64. What are the several kinds of appeal in bankruptcy?

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. What decisions in the Quarter Sessions are liable to be reviewed in any and which of Courts at Westminster?

66. What power have the judges of the Superior Courts, and the magistrates respectively, with regard to admitting accused persons to bail?

67. Is there any and what alteration in a bill or note, after it has been signed by the party, which will constitute forgery?

68. Define the offence of larceny, and state the facts necessary to be proved in support of an indictment for that offence?

69. Valuable property has been found, and the finder knows the owner, and does not restore it:—is this larceny?

70. A clerk of agent renders a false account to his principal, concealing from him the know-

ledge of part of the money or effects received on his account ;—Is the agent amenable to the Criminal, or only to the Civil Law ?

71. Give a definition of the offence of embezzlement, and mention the principal facts to be proved on an indictment ?

72. In support of an indictment for perjury in an affidavit, what evidence must be adduced ?

73. Will the compounding an offence, in any and what instances, subject the party effecting the compromise to an indictment, and in what instances will an indictment not lie ?

74. Is there any, and what recent alteration in the law relating to accessories, and the power of trying them with or without the principal offender ?

75. What steps should be taken by a solicitor retained to defend an accused person ?

76. What is the mode of proceeding to procure and carry into effect a writ of habeas corpus, where a person is alleged to be unlawfully detained or imprisoned ?

77. What is now the law with respect to acquiring a right to parochial relief ?

78. When and how can a public footpath be stopped or altered ?

79. In what cases and to what extent is a prosecutor entitled to costs, how are they ascertained, and by whom are they payable ?

THE ATTORNEYS' CERTIFICATE DUTY.

SUBSTITUTION FOR THIS WAR TAX.

It occurs to me worthy of consideration that, if it is thought expedient by Government to levy a tax on professions, it is but fair that all professions should be taxed, and that moderately. I feel assured that a moderate tax of even 5s. a year on ALL professions, including barristers, would realize a very large revenue, and far exceeding the aggregate amount unjustly screwed out of *one branch* of the profession of the law, who, with their reduced charges and great competition, are much less able to bear the abominable tax than they were 20 or 30 years ago. In fact the income of professional men has been diminished one-third, and in some cases one-half, and many have been brought to the verge of beggary and ruin.

CIVIS.

[We have frequently adverted to this topic, and particularly at 38 L. O. 383. All professional persons should be registered and pay a small fee annually for renewing their certificates. Such a registration would be agreeable to every respectable man, and give security to the public that their place of abode should be known. Factors, brokers, agents, accountants, and all persons not keeping shops or warehouses, should be duly registered.—ED.]

REDUCTION OF CERTIFICATE TAX.

Having in the Vacation had an opportunity

of conversing with many professional men in various parts of the country, I witnessed an uniform objection to this iniquitous tax, and an anxious desire for its abolition. I think it, however, right to state that with some men of eminence I found an opinion to prevail that it would have been wise in the first instance to endeavour to effect a reduction of the tax to *one-half*, and by and bye to seek a removal of the remainder.

A SOLICITOR OF 50 YEARS.

[It is obvious to remark on this suggestion, that the Law Society having the charge of the petitions for the *total* repeal of the tax, cannot in the first instance apply for a mere *reduction* ; but we presume that they would willingly communicate with the body they represent if an intimation were given by the Chancellor of the Exchequer that he would grant an "Instalment of Justice." Doubtless it would be willingly accepted. We understand that Lord Robert Grosvenor was consulted on the expediency of asking only for a reduction, but he advised that the profession should press for a total repeal.—ED.]

LIVERPOOL LAW SOCIETY.

REPORT OF THE COMMITTEE FOR THE YEAR ENDING NOV. 1, 1849.

YOUR Committee, in presenting their Annual Report, have to announce that one new member, Mr. Francis Hamp, has been elected since the last annual meeting. They have also to report with regret, the death during the same period of two members, Mr. Thomas Boyd and Mr. William Irlam, and that two members, Mr. John Shaw Leigh, and Mr. George Worthington, have retired from the Society, in consequence of a change of residence. Another gentleman, having failed to pay his subscription, has ceased to be a member, pursuant to the 8th rule of the Society. The total number of members is now 92, being an increase of only two since the year 1846, and your Committee, being convinced that the efficiency of a Society like this is in a great degree in proportion to the extent of the support it derives from the class from which it has sprung, would earnestly urge that endeavours be made to procure an increase of members. And, further, that if, in the prosecution of such endeavours, objections are met with, which an alteration in the laws or constitution of the Society might remove, such objections be communicated to the successors in office of your Committee, in order that the practicability of obviating them, without impairing the efficiency of the Society, may be considered.

Several bills affecting the law and its administration were introduced to parliament during the last Session, and sub-committees were appointed by your Committee to examine their provisions and watch their progress. With

the exception, however, of the Bill for the Consolidation and Amendment of the Law of Bankruptcy, no measure requiring the particular attention of your Committee received the royal assent. With respect to the Bankruptcy Consolidation Act, your Committee have to report that, through the sagacity and activity of several influential members of the mercantile community of this town, who, with the able assistance of two of the members of this Society, pointed out to a Committee of the House of Commons several objectionable provisions in the bill, affecting the freedom and security of mercantile transactions, and procured the modification of the clauses in those respects, it became unnecessary for your Committee to take any steps, by petition or otherwise, for the alteration of a measure which upon the whole they regard as effecting improvements in the law previously existing.

In the course of the session of parliament, your Committee caused a petition from the attorneys and solicitors practising in Liverpool, for the repeal of the Annual Certificate Duty, and other licences to carry on a profession or business, to be drawn up, and, after receiving numerous signatures, presented to the House of Commons. The proposed bill for securing the object of the petition was not, however, introduced, it having been deemed advisable by Lord Robert Grosvenor, who had undertaken to bring in the bill, and by others interested in its success, to wait until the next session of parliament.

Your Committee have, during the past year, and especially during the session of parliament, received frequent communications from both the Incorporated Law Society, and the Metropolitan and Provincial Law Association, respecting matters affecting the state of the law, and the interests of the profession, and are more than ever convinced, that it is only by a permanent and organised association, comprising the members of the profession in town and country, that sound and systematic law reform can be procured, and means taken for securing a due recognition of the claims of the profession. It is for these reasons that your Committee have heard with regret, that several members of the legal profession in this town, formerly subscribers to the Metropolitan and Provincial Law Association, have already, during the critical period of the infancy of the Association, and before its plans of action can be properly matured, withdrawn their support from it, and your Committee would earnestly recommend the members of this Society to endeavour to increase the number of subscribers to that Association.

Your Committee have to announce that the Liverpool Junior Law Society, after an existence of less than three years, was dissolved early in the present year, in consequence of the resignation and removal of some of the members, and the want of interest manifested by others. Your Committee understand that the first mentioned was the principal cause, and they trust that at no distant period the

Junior Law Society will be re-established upon a more permanent basis. Your Committee are so deeply impressed with a sense of the advantages resulting from an Association of Articled Clerks, for the purpose of mutual improvement, that they would earnestly call upon those members of this Society who have Articled Clerks, not only to urge them to form a Society for that purpose, but also to aid them with suggestions for the better prosecution of its objects.

The accounts of the treasurer show a balance of 160*l.* 8*s.* 11*d.* standing to the credit of the Society.

The members of the Committee whose term of office has now ceased, are—Mr. Payne, Mr. Avison, Mr. Falcon, Mr. Fisher, and Mr. Ellis.

ROBERT NORRIS, President.

NOTES OF THE WEEK.

NEW TRIALS IN THE QUEEN'S BENCH.

HIS brother judges entertain such a confident expectation that the learned Lord Chief Justice of the Queen's Bench will shortly be able to resume the public discharge of his judicial functions, that they have notified their intention *not at present* to enter upon the discussion of any rules for new trials granted in cases tried before his lordship. Monday last was the first occasion when this arrangement took effect, and it was then found that so great a number of the rules for new trials appearing at the top of the new trial paper had been granted in cases tried before Lord Denman, that if these rules were passed over the Court would have no business to proceed with, in which the parties could reasonably be expected to be prepared. If a similar difficulty should occur on the next occasion when the new trial paper is called on, there is no doubt that the Court will be compelled, from a sense of the public inconvenience which would arise by adherence to the regulation, to depart from it, and proceed to hear and dispose of the cases tried before Lord Denman, without waiting for the learned Chief Justice to be present. In this, as in all the other Courts, a great addition has been made to the new trial paper, in consequence of the number of rules granted during the present Term.

EXCHEQUER CHAMBER.—SITTINGS IN ERROR.

The Court has appointed the following days upon which their lordships will sit in error.

From the Court of *Queen's Bench*:—Tuesday, Nov. 27; Wednesday, Nov. 28; and Thursday, Nov. 29.

From the Court of *Common Pleas*:—Friday, Nov. 30.

From the Court of *Exchequer*:—Saturday, Dec. 1; and Monday, Dec. 3.

RESULT OF MICHAELMAS TERM EXAMINATION.

One hundred and twenty-five Candidates attended on Tuesday last and were examined. The Examiners were Master Walker, Mr. Amory, Mr. Holme, Mr. Kinderley, and Mr. Tooke. Nearly the whole of the second day was occupied in perusing and considering the answers to the questions. In the result 117 were passed and 8 postponed.

NEW JUDGE OF THE COUNTY COURT.

We have much pleasure in announcing that

the Lord Chancellor has appointed Mr. Serjeant Dowling to the office of Judge of the County Court for the district of the North Riding of Yorkshire, vacant by the recent decease of Mr. Robert Wharton. The public services rendered by Mr. Serjeant Dowling, whilst acting as judge *pro tempore* on the Norfolk and Home Circuits, which were universally acknowledged by the profession, prove him to be eminently qualified for the discharge of the highest judicial duties, and afford the best security that the duties of the office he has now been appointed to will be ably and satisfactorily performed.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Sainter v. Ferguson. Nov. 5, 1849.

INJUNCTION.—RESTRAINT OF PRACTICE.—EFFECT OF VERDICT FOR LIQUIDATED DAMAGES ON AGREEMENT.

Held, (*reversing the order of Vice-Chancellor Knight Bruce in Sainter v. Ferguson*, 38 L. O. 393,) *that, where the plaintiff, a surgeon, employs the defendant as his assistant under an agreement that the defendant was not to practise as a surgeon in the town or within seven miles thereof, under a penalty of 500*l.*, and the plaintiff has recovered the 500*l.* as liquidated damages, by such verdict at law the contract between the parties is at an end, and an injunction restraining such practising was dissolved.*

Semble, an injunction will only be granted in aid of a legal right, where such right has been established at law and continues to exist.

The plaintiff, Joseph Dendy Sainter, a surgeon at Macclesfield, had entered into an agreement with the defendant on 12th April, 1848, whereby, in consideration that the plaintiff engaged the defendant as assistant, the said defendant promised that he would not at any time practise at Macclesfield, or within seven miles thereof. The defendant having been dismissed from the plaintiff's employment for misconduct, commenced practice as a surgeon at Macclesfield. A motion for an injunction had been made to the Vice-Chan. Knight Bruce, but refused on the ground of an action then pending, and an appeal from this decision had been dismissed with costs, (37 L. O. 130). At the trial of the action for breach of covenant, a verdict passed for the plaintiff, damages 500*l.*, and the Court of Common Pleas directed them to be considered as liquidated damages, (38 L. O. 15). The motion for an injunction was thereupon renewed, the legal right having been established, and was granted—the proof for

the damages under the defendant's bankruptcy being expunged (38 L. O. 393). This appeal was therefore presented from that order.

Bacon, and *Lewin*, for the appellant, cited *Woodward v. Gyles*, 2 Vern. 119; *Lowe v. Peers*, 4 Burr. 2225; *French v. Macale*, 1 Conn. & L. 459; 2 Dru. & W. 269. *J. Russell* for the respondent.

The Lord Chancellor said, that the damages being in the nature of liquidated damages had incorporated the agreement into the verdict, and that therefore it was at an end between the parties. The defendant had purchased a right to practise at Macclesfield, in consideration of the 500*l.* liquidated damages, and this Court could not restrain him from so practising.^a There had no case been mentioned in the argument, in which an injunction had been granted to aid a legal contract after it had ceased to exist, and in the absence of such precedent this Court must act upon the ordinary principle of only granting an injunction in aid of a legal right, where such right had been established at law, and continued to exist. The order of the Court below must be therefore reversed.

Nov. 7.—*In re St. George's Steam Packet Company, Ex parte Pim*—Leave to amend defective notice.

—7.—*Clegg v. Fishwick*—Appeal from Vice-Chancellor Wigram, dismissed with costs.

—7.—*In re Cambridge and Colchester Railway Company, Ex parte Marsh*—Motion dismissed with costs, on the ground that the discretion given to the Master of awarding costs to be paid by contributories under the 11 & 12 Vict. c. 45, did not extend to the official manager, against whom no such order could be made.

—7.—*In re North of England Joint-Stock Banking Company, Ex parte Sanderson*—Appeal

^a It does not appear that the 500*l.*, or any dividend, has been paid.—Ed.

dismissed with costs on the ground that it was too late, under the 12 & 13 Vict. c. 108.

— 8.—*Rubery v. Morris*—Order for *dises* costs, where the plaintiff had not succeeded in the suit.

— 8.—*Lewis v. Smith*—Order of Court below affirmed.

— 7, 8, 10.—*In re North of England Joint-Stock Banking Company, Ex parte Hall*—Stand over, in order to try at law whether petitioner was a contributory.

— 8, 9, 10.—*In re Bloyes' Trust*—Accountant-General directed to retain fund paid into Court under Trustees' Relief Act, in order to give reversioner time to file a bill for cancellation of deed of sale of reversion.

— 9, 10.—*Goodall v. Gawthorne*—Appeal from Vice-Chancellor of England dismissed with costs.

— 10.—*In re North of England Joint-Stock Banking Company, Ex parte Armstrong*—*Cur. ad. vult.*

— 10.—*Pearse v. Brooke*—Stand over.

— 10, 12.—*In re Shrewsbury Grammar School*—Appeal allowed.

— 12.—*Stiles v. Guy*—Appeal dismissed with costs.

— 12, 13.—*Visme v. Visme*—Order of Vice-Chancellor Wigram varied, and reference to inquire when a good title had been shown.

— 12, 13.—*Myne v. Gilbert*—Appeal dismissed with costs.

— 13.—*In re Bartholomew's Trust*—*Cur. ad. vult.*

— 13.—*Ward v. Swift*—Petition dismissed.

— 13.—*In re Beverley Charities*—Carriage of reference directed to six trustees, opponents to petition by two, to fill up vacancies where the latter had been guilty of irregularity.

Rolls Court.

Cooke and another, executors, v. Lamotte and others. Nov. 2, 3, 5, 1849.

INJUNCTION.—VALIDITY OF BOND AT LAW.—EXECUTION.

Where a bond was alleged to have been obtained from a testatrix by fraud, and undue influence, and an injunction was sought to restrain the defendants from proceeding at law against the executors thereupon: Held, that the injunction would only be granted to stay execution, as the parties must have liberty to proceed to trial at law upon the bond.

THIS was a motion for an injunction on behalf of Isaac Cooke and Simon Fraser Pigott, executors of the last will of Mrs. Louisa Foster, to restrain the defendants from proceeding at law against them to compel payment of a bond conditioned for 15,000*l.* It appeared that the deceased, who was 78 years old, had instructed the plaintiff, Mr. Cooke, a solicitor at Bristol, to prepare her will, whereby she gave considerable bequests to the defendants, John Lewis Larotte, Charles Wyndham Lamotte, and George Thomas Crespiigny Lamotte, her nephews, but that afterwards, in

consequence of a quarrel between her and her nephews, the plaintiff was instructed in April, 1847, to prepare a new will, which was on September 22, duly executed and attested, whereby her personal estate was conveyed upon certain trusts to the plaintiffs, who were also made executors. The testatrix had frequently stated to the plaintiff that she was possessed of and had power over property to the amount of more than 20,000*l.*, and that she was not indebted to the defendants or to any other persons. Upon her death in December, 1848, the defendants, on receiving notice thereof and of her will, informed the plaintiff of a former will of 1845, whereby they had been appointed residuary legatees, and likewise of a bond, dated February 7, 1846, securing their interest, for 30,000*l.*, conditioned for payment of 15,000*l.*, which the plaintiffs contended the testatrix had executed in ignorance of its contents, under undue influence, and in the belief that it was of a different character. The bill also prayed for a declaration that the bond had been fraudulently obtained, and that it should be delivered up to be cancelled.

Turner and Elmsley for the plaintiffs: *Walpole, Lloyd and Busk* for the defendants.

The *Master of the Rolls* said, that the parties must have liberty to proceed to trial at law upon the bond, and the injunction could only be granted to stay execution.

Nov. 7.—*Laprimaundaye v. Teissier*—Order for payment of certain dividends which had accrued on stock standing to joint account of husband and wife, and not received in the husband's lifetime, to the wife and not to his representatives.

— 7.—*Attorney-General v. Cotton*—Charity scheme approved, notice however to be given on church doors of the names of proposed new trustees.

— 8.—*Dugdale v. Dugdale*—Order for payment of costs of ascertaining next of kin out of estate.

— 8.—*In re London and Portsmouth Railway Company*—Petition dismissed without costs.

— 9, 10.—*Zubeta v. Vinet*—Demurrer overruled, without costs.

— 10, 12.—*Hill v. Gordon and others*—*Cur. ad. vult.*

— 7, 12.—*Ranelagh v. Ranelagh*—Judgment on construction of will.

— 13.—*Bailey v. Birkenhead, Lancashire and Cheshire Junction Rail. Co.*—Part heard.

Vice-Chancellor of England.

Bell v. Bell. August 3, 1849.

INSOLVENT.—ASSIGNEES.—RETENTION BY ADMINISTRATORS OF DEBT DUE TO INTESTATE.

Held, that the assignees of an insolvent are entitled to the whole of his share in an intestate's estate where the debt sought to be retained by the administrators was contracted previously to the insolvent's taking the benefit of the act, and such debt was inserted in the schedule.

THIS petition was presented by the assignees of one Edward Bell, an insolvent and one of the next of kin of John Bell, praying a declaration that the administrators of John Bell, who died intestate in 1847, were not entitled to retain a debt due from Edward Bell to the intestate out of his share of the estate. It appeared that the debt was contracted in 1839, and that the insolvent took the benefit of the act in 1841, and was discharged. An administration suit had been instituted in 1848, and the insolvent and his assignees made parties, and the common decree had been directed and a report made.

Rolt and Speed, for the assignees, cited *Cherry v. Boulbee*, 2 Keen, 319; 4 Myl. & C. 442.

Bethell and Cotton, contra.

The Vice-Chancellor held, that according to the case of *Cherry v. Boulbee*, cited at bar, the assignees were entitled to the whole share, without deducting the debt due from the insolvent included in his schedule.

Nov. 8.—*Sawyer v. Mills and others*—Motion to dismiss bill against certain defendants and to pay plaintiff's share into Court, refused with costs.

—7, 9.—*Attorney-General v. Brown's Hospital*—Cur. ad. vult.

—10.—*Sergrove v. Mayhew*—Plea for want of parties overruled with costs.

—12.—*Parsons v. Benn*—Dissolution of partnership decreed from 11th April, 1848—Defendant to pay costs.

—13.—*Ashburnham v. Ashburnham*—Part heard.

Vice-Chancellor Knight Bruce.

Howe v. Howe. Nov. 8, 1849.

WILL.—CONSTRUCTION.—RENTS AND PROFITS.

Upon construction of a will, held, that the widow who was tenant for life was entitled to the income arising from certain long annuities and leaseholds part of the testator's estate.

The testator by his will bequeathed to his widow the interest of all monies and securities for money, and all the rents and profits of all the real and personal estate of which he might be possessed, for her life, or so long as she would remain unmarried. It appeared that certain long annuities and leaseholds formed part of the testator's estate at his decease.

Wigram and Brinkne for the plaintiff; *Russell and Lloyd*, for the widow, contended that the estate should remain in the same condition as it was at the testator's death, citing *Pickering v. Pickering*, 2 Beav. 31; 4 Myl. & Cr. 289; *Pickering v. Atkinson*, 4 Hare, 624; *Daniel v. Warren*, 2 Y. & C., Ch., 290.

Bacon and Jervis, for the son, the residuary legatee, urged that the words *rents and profits* in the will did not apply to the long annuities, which were part of the testator's capital, and

that therefore the widow, as tenant for life, was not entitled to enjoy them in specie.

The Vice-Chancellor, however, held, that the widow was entitled to the enjoyment of the property in specie, and that the estate ought not to be converted.

Nov. 7.—*Exparte Bishop*, in re *Bishop*—Petition to annul fiat to stand over in order to try its validity at law.

—7.—*Exparte Spicer*, in re *Mathias*—Petition to stay certificate granted by country Commissioner refused, each party to bear his own costs.

—8.—*Hanbury v. Fletcher*—Part heard.

—8.—*Howe v. Howe*—Judgment on construction of will.

—9.—*In re Tontine Life Assurance Co.*, *exparte Dee*—Order for winding up.

—9.—*In re Kilbricken Silver and Lead Mining Co.*, *Exparte Crockford*—Order for winding up.

—9.—*In re Loyal Pride of the Thames Lodge of Odd Fellows*—Order under 5 Vict. c. 5, restraining transfer of stock belonging to society.

—9.—*In re Brighton and Chichester Rail. Co.*, *Exparte Allen*—Order for payment out of Court of purchase money, with costs to be paid by company.

—10.—*Dakin v. North Western Railway Co.*—Stand over.

—12.—*Clark v. Kelly*—Injunction restraining solicitor from paying a sum of money to other than person duly appointed.

—12, 13.—*Emmett v. Dewhurst*—Reference to the Master.

Vice-Chancellor Wigram.

Lascence v. Tierney. Nov. 8, 1849.

TRANSFER OF FUND PENDING APPEAL.—INJUNCTION.

Motion refused with costs to restrain the transfer of fund pending appeal on the parties undertaking not to take it out for a fortnight.

THIS was a motion to restrain the transfer of a fund in Court pending an appeal from the decree, made in the suit directing the transfer, to the Lord Chancellor, and of which appeal notice had been given.

F. S. Williams in support of the motion; *James and J. Bailey* contra.

The Vice-Chancellor said, that upon an undertaking by the parties opposing not to transfer the fund for a fortnight, in order to allow the appellant time to apply for the purpose of advancing his appeal, the motion would be refused with costs.

Nov. 7.—*Carter v. Coope*—Reference to the Master to inquire as to amount and particulars of property assigned by deed of settlement, and also whether the trustee might have recovered any and what property, by due diligence.

—7.—*Attorney-General v. Murdoch*—Judgment on information as to preachingship at

chapel, and reference to the Master to appoint new trustees, costs to be paid by the defendants.

— 8.—*Rigby v. Great Western Rail. Co.*—Stand over to next seal.

— 7, 9.—*Dixon v. Pyner*—Bill dismissed as far as charging trustees with wilful default, and account decreed against the trustees.

— 9.—*Attorney-General v. Murdoch*—Motion to stay execution of decree, withdrawn by consent.

— 9, 10.—*Marquis of Londonderry v. Ovingdon and others*—Bill dismissed with costs as against defendant Walker, and retained for a year as to rest, with leave to bring action.

— 10.—*Attorney-General v. Governors of Harrow School*—Relators to be allowed their costs.

— 12, 13.—*Davidson v. Proctor*—Judgment upon construction of will.

— 12, 13.—*Wood v. Freeman*—Decree for specific performance with reference to the Master.

— 13.—*Duke of Beaufort v. Morris*—Part heard.

Queen's Bench.

Chard v. Fox. November 5, 1849.

PROMISSORY NOTE.—PRESENTMENT.—DIS-HONOUR.—NOTICE.

Semble, that a verbal notice of presentment and dishonour of a bill by the clerk of the plaintiff's attorney to defendant is sufficient.

Quære, whether presentment of a bill at the house occupied by the maker, at the time it was drawn, but which he had left 15 months before, to a workman on the premises, is sufficient, the note not being payable at any particular place.

THIS was a motion for a rule calling on the plaintiff to show cause why the verdict in this action should not be set aside and a new trial had, on the ground of misdirection. The action was brought against the defendant, an indorser of a promissory note, of which his son was drawer, but which was not made payable at any particular place. It appeared that the note had been presented to a workman at the house formerly occupied by the defendant, but which he had left for 15 months, and that a verbal notice only had been given to the defendant of the presentment and dishonour of the note by the clerk of the plaintiff's attorney, who called on him to inquire the address of his son.

Garney, Q. C., in support of the motion, contended, that a notice of dishonour given by a party to a bill other than the holder, should show that the party to whom it was addressed is looked to for payment: *East v. Smith*, 4 D. & L. 744.

The Court granted a rule on the first point, but refused it on the second. The notice of dishonour was sufficient according to the decision in *Solerte v. Palmer*, 7 Bing. 533; 1 C.

& J. 417; 5 M. & P. 425; 1 Bing. N. C. 194; 1 Scott, 1; 8 Blyth, N. S. 874.

Nov. 7.—*Cooper v. Bloxham*—Cur. ad. vult.

— 7.—*Wilson and others v. De Zulusta*—Rule nisi to set aside verdict and enter nonsuit, or in arrest of judgment.

— 7.—*Regina v. Smith*—Rule refused to set aside award and judge's order thereon.

— 8.—*Malin v. Hodgson and another*—Rule nisi granted upon leave reserved to enter nonsuit on 5th and 7th issues.

— 9.—*Baker v. Rush*—Cur. ad. vult.

— 9.—*Whalley v. Bramwell*—Rule nisi on leave reserved to enter verdict for defendant.

— 9.—*Strutt v. Whitcombe and others*—Cur. ad. vult.

— 10.—*Hounsfield v. Curtis*—Rule nisi for new trial on the ground of misdirection and improper reception of evidence.

— 10.—*Jones v. Alexander and others*—Rule nisi for new trial.

— 12.—*Hankinson and another v. Alcock*—Rule absolute for new trial on the ground that the verdict was against evidence.

— 13.—*Small v. Gibson*—Cur. ad. vult.

— 13.—*Howley v. Knight*—Part heard.

Queen's Bench Practice Court.

Ashworth v. Sheppard and others. Nov. 5, 1849.

ACTION OF REPLEVIN.—COUNTY COURTS' ACT.—JURISDICTION.

Quære, whether actions of replevin are governed by the 58th section or by the 121st section of the 9 & 10 Vict. c. 95?

THIS was a motion for a prohibition to restrain the judge of the County Court of Lancashire, held at Harlington, from proceeding in this cause. The defendant had issued warrants of distress for rent claimed by him as heir-at-law to one Judith Tattersall, under a document lodged in the Consistory Court of Chester which purported to be her will. It appeared, however, that a suit was pending between the defendant and the executors under that will, and that notices had been served upon the tenants not to pay rent to the defendant, and other parties had put in claims and had levied for the rent. Under these circumstances, a summons in replevin had been served on the defendant. The defendant contended that the 58th section of the 9 & 10 Vict. c. 95, which enacts, that "the Court shall not have cognizance of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments" shall be in question, applied to cases of replevin. By section 121 it is provided, that "in cases either party to any such action of replevin shall declare to the Court in which such action shall be brought that the title to any corporeal or incorporeal hereditament" &c. is in question, "and shall become bound, with two sufficient sureties, to be approved by the clerk of the Court," &c. "to prosecute the suit with effect and without delay, and to prove before the Court by which

such suit shall be tried that such title as aforesaid is in dispute between the parties," &c., "then, and not otherwise, the action may be removed before any Court competent to try the same in such manner as hath been accustomed."

Atherton in support of the rule.
The Court granted a rule nisi.

Nov. 7.—*Hodgkinson v. Thompson*—Rule nisi to set aside consent to a judge's order, the order and subsequent proceedings, on the ground of illegality.

—8.—*Duff v. Chambre*—Rule nisi to set aside annuity deed and warrant of attorney and all subsequent proceedings.

—9.—*Regina v. Justices of Bath*—Rule nisi on justices to issue distress warrant for payment of penalty under 29 Car. 2, c. 7.

—9.—*Markwell v. Dyson*—Rule nisi for attachment for contempt.

—9.—*Regina v. Birmingham and Oxford Railway Company*—Rule nisi for mandamus to summon a jury to assess damages.

—10.—*Regina v. Justices of Kingston-upon-Hull*—Rule nisi for mandamus on justices to issue distress warrant for penalties under Nuisances' Removal Act.

—13.—*In re Bramall*—Rule nisi to strike attorney off the Roll.

Common Pleas.

Sleep v. Booth. Nov. 8, 1849.

SOLICITOR.—BILL OF COSTS IN SUIT NOT ENDED.

Held, that a solicitor employed in a Chancery suit, but superseded before its termination, may recover for his bill of costs incurred therein after the expiration of a year, although the suit may not then have ended.

THE plaintiff, Jonathan Thomas Sleep, had been employed as the solicitor in a Chancery suit, but having been superseded before its termination, brought this action to recover his costs. It appeared that the last item in the bill of costs was dated 12 months before the action. A verdict having passed for the plaintiff,

Channell, S. L., now moved to enter a nonsuit on the ground that as the suit was not terminated the action could not be maintained, and that there was therefore no evidence for the jury.

Macle, J. This is an ordinary case of an executed consideration for work and labour done. It was clear that when an attorney had finished a suit, he was entitled to recover his costs, and that if he were superseded and not allowed to proceed therein, he could recover as for an executed consideration.

Wilde, L. C. J. If the plaintiff were not entitled to recover now, it does not appear when he can.

Rule refused.

Nov. 7.—*Westropp and another v. Solomon*—Upon a special case, order to enter nonsuit.

—8.—*Dell (P. O.) v. Welch and another*—

Rule nisi upon leave reserved to enter nonsuit or reduce damages.

—8.—*Barnard and others v. Pilsworth*—Rule nisi to enter a nonsuit.

—8.—*Boulter v. Pepler*—Rule nisi to set aside verdict and enter it for defendant.

—8.—*Marsters v. Barretto*—Rule refused to enter verdict for defendant.

—8.—*Hitchcock v. Smith*—Rule refused for a new trial.

—8.—*Hamilton v. Smith*—Rule nisi for new trial.

—10.—*Banwen Iron Company v. Barretti*—Judgment for the plaintiffs on special demurrer.

—12.—*Powell, app., Caswell, resp.*—Judgment of revising barrister reversed.

—12.—*White, app., Pring, resp.*—Decision affirmed with costs.

12.—*Capell, app., Overseers of Aston, reaps.*—Cur. ad. vult.

—12.—*Burton, app., Overseers of Aston, reaps.*—Cur. ad. vult.

—12.—*Borough of Newport, app., v. White, resp.*—Judgment for respondent.

—13.—*Ellis v. Wati, executor*—Rule refused for prohibition to judge of County Court.

—13.—*Stead v. Anderson*—Motion for discharge of prisoner refused.

—13.—*Stead v. Williams*—Rule for new trial refused.

—13.—*Yates and others, assignees, v. Hoppe*—Rule nisi to enter verdict for defendant, or for a new trial.

—9, 13.—*Stroud v. East and West India Docks and Birmingham Junction Railway Company*—Rule to set aside award under 8 Vict. c. 18, discharged.

—13.—*Hudson v. Haslam*—Rule refused to enter verdict for nominal damages.

Exchequer.

Nov. 7.—*Pratt v. Hardisty*—Cur. ad. vult.

—7.—*Higginbottom v. Waters*—Rule nisi to set aside verdict and for new trial.

—7.—*Grieve v. Milton*—Rule nisi in arrest of judgment.

—8.—*Orchard v. Lewis*—Rule nisi for new trial.

—8.—*Fossick v. Blane*—Cur. ad. vult.

—8, 9.—*Brooks v. Rookes*—Rule nisi for new trial on the ground of excessive damages.

—9.—*Williams v. Thomas*—Cur. ad. vult.

—9.—*Levy v. Smith*—Rule for new trial on the ground of misdirection, refused.

—10.—*Atha v. Simpson*—Cur. ad. vult.

—10.—*Levy v. Young*—Rule nisi for new trial on the ground of surprise, on payment of costs.

—10.—*Lingham and others v. Wilton*—Cur. ad. vult.

—12.—*Gosden v. Elphick and another, Vaas v. Same, Maynard v. Same*—Rule for new trial refused.

13.—*Wakley v. Cooke and another*—Rule for new trial discharged.

—13.—*Spottiswoode v. Barrow*—Rule nisi for new trial.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM TRINITY TERM, 1849.

Queen's Bench.—Middlesex

R. Sydney	Cahill	S. J. Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe	Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J. Wilkinson (stayed)	Prom. Howard
M. Fraser	Williams	S. J. Whiteway (inj.)	Prom. Mardon and P.
Adlington and Co.	Bastone and another	Ross (inj.)	Dt. Chadwick
Elderton and H.	Fiddes	S. J. Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Crowther, admix., &c. (inj.)	Edwards and another, surviving executors	Dt. Williamson
Becke	Becke	Parish and another	Dt. Helme
Jno. Lewis	Moon (stayed)	Cannop	Pro. Lewis
Thomas M. Parker	Clerk (inj.)	S. J. Hughes	Pro. Burrell
Ablett	Neal	Ward (inj.)	Pro. Carlon and H.
Everest and Co.	Clutterbuck	Carter (inj.)	Pro. Bell
Wontner	The Queen	Johnson and others	Indt. E. Lewis
Wyche	Flocton and others	S. J. Melladew and others	Ca. G. Fry
Sutcliffe	Foster	S. J. Loftus	Cort. Lethbridge and M.
Same	Swindall	S. J. Dawson	Cort. Lewin
Same	Foster	S. J. Same	Cort. Same
Same	Swindall	S. J. Loftus	Cort. Lethbridge and M.
Nixon	Ghialin	Gregory and another	Tres. Hodgson and B.
Coode and Co.	The Queen	S. J. Sievier	Sci. fa. Wight
Lewis and L.	Potter and another	S. J. Jerdein	Pro. Dickson and O.
H. Walker	The Dean and Chapter of Christ Church, Oxford	S. J. Hicks	Dt. C. Blake
Wathen and P.	Smith	Mead	Dt. Charles Barham
Sole and T.	Wolton	S. J. Gavin	Tres. Derby and R.
Walker, Grant, and Co.	Doe several dems. Conant, Ea. and others	S. J. Shaw	Ejt. Davies, Son, and Co.
John Bennett	Roberts	S. J. De Zulueta and others	Pro. Lawfords
Beales	Holmes	S. J. Hamilton	Dt. Bickley
Harbin and W.	Trail and others	S. J. Grey and others	Ca. Cree and Son
Sr. Treasury	The Queen	S. J. Mabon	Indt. Gilham
E. Clarke	Pellett (a pauper)	S. J. Chesterton	Tres. Allen and Co.
J. Bird	Blanchard	Ripley and another	Ca. Tyas & Son
Wontner	Davies	S. J. Hassell and another	Tres. Bolton
Lawrance and P.	Rees	S. J. Brough	Issue, Brough
Same	Same	S. J. Ponsonby	Iss. Ford
Hall and Co.	Doe d. Barnes and anr.	Newnham and another	Ejt. Hutchinson
Willoughby and Co.	Taplin	Church	Pro. I. A. Jones
J. Bird	Hopper	S. J. Baker	Dt. Baker and Co.
Thompson and D.	The Queen	S. J. Owen	Indt. Lefroy
Same	Same	S. J. Same	Indt. Same
Wontner	Barker	S. J. Cape and wife	Tres. Hussey and Co.
Parker and Co.	Pritchard	S. J. Thompson	Pro. Wire and C.
Same	Same	S. J. Wheelton	Pro. Same
Watson	Simmons	Simmonds	Dt. Lloyd
G. Brown	Angell	Sloper	Pro. Eyre
Oldknow	Quelch (pauper)	S. J. Watley	Ca. Phillips
Lewis and L.	Rotter and another	S. J. North	Pro. W. G. Taylor
Same	Potter and another	Pritchard	Dt. Pritchard
Bircham	Rumbelow	Whalley	Dt. Baxter and Co.
F. W. Dolman	Watkins	Fincher, jun.	Ero. Clarke
Wetherfield	Seage	S. J. Killick	Pro. Philp
F. and H. Palmer	Norman	Baber	Dt. W. B. Davies
Thomas Owen	Skellorn	Levy	Tres. John Lewis
S. Abrahams	Dawes	Hay	Pro. J. Lewis
Brandon	Spiller	S. J. Watts and another	Ca. Dawes.
Fry and L.	The Queen	S. J. The South Eastern Railway Company	Issue Tilleard and Co.
Childs	Birch and another	S. J. Locksley	Pro. Alger
Rackham	Earl Amherst and others	Wright	Pro. Nichols
Shearman and L.	The Queen	S. J. Waller	Indt. In person
Comyn	Doe sev. dems. Williams	King	Ejt. Vaughan
Baker and Co.	Baker and another	Metyweather	Pro. Raw
In person	Wisewould	Whalley	Pro. W. Whalley

Thomas Hicks	Symes	Holmes	Pro. Corpe
Allen and M.	Corbett	Lynde	Pro. Hughes, K. and Co.
Mawe	Doe d. Holmes & ors. S. J.	Winsor	Ejt. E. Gregory
Chappell	Allen	Chappell	Tres. Chappell
Poole and G.	Barker and another S. J.	Cleobury	Pro. Walker
Denton	Doe d. Barker	Mullany	Tres. W. H. Davis
Doane	Paroissien	Robins	Dt. Aldridge
Piampre	Hales	Firminger	Covt. Hodgson
Thomas	Smith	Lane	Pro. Carpenter
M. Newton	Foster	Bishop	Dt. Dolman
Branscomb	Benson	Lowe	Pro. Wilkinson
Elderton	Cameron's Coalbrook Steam Coal & Swansea and Loughor Railway Company	Molise	
W. and E. Dyne	Reading S. J.	Dillon and others	Dt. Atkinson and P.
Dawes	Lamenade	Nind	Pro. Dobie
Hawkins and Co.	Postle, admix., &c. S. J.	Magnay, Bart.	Ca. Whalley
Lewis and C.	Beverley	Ibbetson, Bart.	Dt. Weir and S.
G. H. Taylor	Doe dem. Theed and ors.	Killick	Currie and Co.
Garry	Coyle S. J.	Leeks	Ejt. Druce and Sons
R. C. Barton	Nunn	Parkins	Ca. Dean and Co.
Same	Same	Pound	Pro. M. Newton
Holme and Co.	The Swansea Vale Rail. Co. S. J.	Perratt and another	Pro. Same
Beales	Cook	Rees	Ca. Hodgson and B.
Smallprice	Steers, Esq.	Warner	Pro. Barton
Tatham and P.	Dighton, clk. S. J.	Jones and another	Pro. Palmer and Co.
Nichols	Rackham	Wright	Dt. Tilson and Co.
Black	James	Wild	Pro. Person
Waite	King	Hare, Kat.	Pro. Letts
Few and Co.	Palmer	Allison	Pro. Davies, Son and Co.
Same	Keys and others	Luscombe	Covt. E. Clarke
Same	Thorne and others	Moore	Pro. Woodroffe
Garry	The Queen	Hart and others	Pro. Smith
Shuttleworth	Daniel	Challis and another	Indt. J. Hudson
Atkinson	Pace	Cole and another	Ca. Kilgour and P.
Bircham and Co.	Chaplin	Burge and others	Tres. Chamberlain
			Ca. Fisher for Burge
			Shirreff for George, Ro-
			binson for Cleft
Sidney	Blight	Crouch	Dt. Haynes
In person	Dalston	Bury commonly called	
		Lord Fullamors	Pro. Withall
Watson	Hill	Smith	Pro. Duncombe
W. Williams	Bryce	Staight	Dt. Church
J. M. Wood	Downman	Downman	Dt. Shaw and N.
Dickson and O.	Myers	Walsh	Pro. Rickards and W.
Doane	Froggatt & ors. admors.	George	Dt. Steadman
Blackmore	The Countess de Salis & others	Bagley	Covt. Garrard
F. Asprey	Hollington	Inall	Repln. Wheelock
Nickson	Stobbs	Coleman	Pro. Asprey
Hill	Oldaker	Payne	Dt. Turner
George	Timothy	Rose	Tres. Tucker

London.

D. Richardson	Mackay (Inj.)	Brooke	Tres. Baxendals and Co.
Capes and S.	Blackmore (Inj.)	Burton and others, execu- tors, &c.	
Keene	Dean (Inj.) S. J.	Grace	Dt. Alban and B.
Vincent and S.	Franklin (stayed) S. J.	Davis and others	Dt. Smith
Lewis and L.	Brand (stayed)	Harper	Covt. Wm. Bevan
W. H. Green	Bond (Inj.) S. J.	Stanley	Pro. Few and Co.
Phillips	Hartley & another (stayed)	Manton	Pro. Few and Co.
Pearce and Co.	Robertson (stayed) S. J.	Dargan	Van Sandau & Co
C. R. Wilson	Gibbs (stayed)	Aberdeen	Covt. Morris
Jardson	Oundell (stayed)	Harrison and others	Covt. Gilbert & Co.
Warter	Sherlock and another S. J.	Brown	Pro. Chester and Co.
Starling	Newman (Inj.)	Parry	Pro. Campbell and W.
Cox and Co.	Jegon	Long	Hughes, K. and M
Linklater	King, Clk.	Liquorish	Dt. Hartley
Baker and Co.	Barry S. J.	Mill	Pro. Howell
Hodgson and B.	Nisbet S. J.	Oliveira	Pro. Gregory and Co.
Same	Murray S. J.	Same	Pro. Fry and Co.
Harris	The Queen S. J.	Lloyd	Pro. Same
			Indt. Gates

R. K. Lane	Howard	S. J. Moore	Pro. Tilson and Co.
Lawson	Lucena	Clements	Pro. Hughes, K., and O
Dawes and Sons	Tucker, secy., &c.	R. J. Roberts and others	Pro. Reyroux and B.
Tatham and Co.	Barker	S. J. Whitworth	Pro. Becke
Same	Same	S. J. Geddard	Pro. Graham
Catlin	Hayward	S. J. Coombs and others	Issue Jaquet
Lacy and B.	Baily and another	S. J. Turner	Pro. Sharpe and Co.
Paterson and Son	Briant	S. J. Taylor	Tres. Newton
Sheppard and D.	Hanbury and another	S. J. Lighton	Dt. Bickley
Dalling	Bland	S. J. Joseph	Pro. A'Beckett and Co.
R. and W. G. Roy	Esdaile, (P. O.)	S. J. Allan	Pro. Simpson and Co.
J. H. F. Lewis	Harrison	Cartar	Dt. Stringer
Hughes, K. and M.	Bell and others, assignees, &c.	S. J. Kerr and others	Tro. Deaborough and Co.
Asbley	Harvey, admor., &c.	Felton	Pro. Wollen
Hughes, K. and M.	Williams	S. J. Smallwood	Tres. Humphreys
Tilson and Co.	Copper Miners Co.	S. J. Fox and others	Pro. Murray
C. E. Lewis	Lewis	S. J. Statley and others	Pro. Mawe
Heatherfield	Tempany (pauper)	Miller	Ca. Rippon
Symes and Co.	Barnes	Bull and another	Pro. Bull
Maples and Co.	Graham and others, assignees, &c.	S. J. Arnold	Pro. Burder
Tatham and Co.	Barker	S. J. Gibson	Pro. Marten and Co.
Bartholomew	Heslop	S. J. Hepworth	Isa. Vandercom and Co.
Lacy and B.	Baily and another	S. J. Berkeley	Pro. Anderson
Ward	The Caledonian & Dum-		
	bartonshire Rail. Co.	S. J. Attwood	Maples and Co.
R. and W. G. Roy	Bagshaw	S. J. Elliott	Pro. Freshfield
Same	Same	S. J. Caulfield	Pro. Same
Same	Same	S. J. Pearse	Pro. Same
Baker and Co.	Barry	S. J. Simpson	Pro. Simpson and C.
Barnes and Co.	Herring and others	Allen	Pro. Dunn and D.
Cox and S.	Morrison and others	S. J. Blandford, chairman, &c.	Pro. Wilkinson and G.
Griffin	Alport	Symmons and another	Pro. C. Jay
Bloxam and Co.	Campbell, Knt.	S. J. Hewlett	Dt. Robson
Lawrence and B.	Toleman	Wood	Dt. R. and J. Russell
Symes and Co.	Hoare and others	Martin	Dt. Peirce
Gardiner	Doe sev. dema. Evers and wife and others.	Challis	Ejt. Kirkman
T. J. Feard	Todd	Markham	Pro. S. Smith
Baxter, R. and N.	Copplestone	Dean	Tres. Hutchison and B.
Willoughby and C.	Turabull	Raven	Pro. Wilkin
J. Rose	Lowden	Mayhew	Pro. Holmer
Samuel	Vericas	French	Pro. Phillips
Knight and K.	Eason	Henderson	Dt. Van Sandau and Co.
W. Jones	Roberts	Grosgean	Dt. M. Lewis
Stretton	Underhill and another	Cleaver	Pro. Wright and J.
Whiteway and B.	Carré	Vanning	Pro. Baker and Co.
Lacy and B.	Baily and another	Pollock	Pro. Stevenson
Humphreys	Allen	S. J. Drew	Tres. Vandercom and Co.
S. Fry	The Galvanized Iron Co.	Ogie	Dt. Clayton
Biggood	Goldie	Wallis	Pro. Whalley
Freeth	Beresford	Phillipps	Covt. J. H. Taylor
J. M. Wood	The Queen	Downman	Wontner
Reed and Co.	Green and ors., assess., &c.	Darby	F. I. James
Hook	Griffin and another	Beresford, Esq.	Dt. Amory and Co.
Beales	Strickland	Smith	Becke
Driver	Corbey	Stephens	Pro. Beart
Leigh	Dulcet and another		Pro. Cox
Gamlen and S.	Banks	S. J. The Western Gas Light Company	Pro. Phillips and Sons
Hook and Co.	Andrew	Smith	Dt. W. H. Smith
Watts	Cheffins	Legh	Pro. Simpson
Prentice	Pharaoh	Jones	Dt. Hill and M.
Niss	Gibbs	London and North-Western Railway Company	Ca. Parker and Co.
Keane	O'Connell	Foster and another	Pro. Alexander
G. Brown	Roberts and another	Corran	Pro. Linklater
Symes and Co.	Price and others	S. J. Kirkman and another	Ca. Rutherford and Son.
Rodgers and P.	Smeed	The General Steam Navigation Company	Ca. Pearce and Co.
Tucker and S.	Moxon, jun.	Watson	Pro. Hutchinson and B.
L. Norton	Miller	Alexander	Dt. J. Lewis
J. A. Jones	Robinson	Bassall	Pro. A. Maghew
George	Charles	Marchand	Dt. Oldknow

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SATURDAY, NOVEMBER 24, 1849.  
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OPERATION OF THE BANKRUPT LAW CONSOLIDATION ACT.

CERTIFICATE OF CONFORMITY.

THE law and practice, with respect to the application for and granting of a certificate of conformity to a bankrupt, have been materially changed by the recent act, (12 & 13 Vict. c. 106,) the form of the certificate is also different, but the effect of the certificate, when obtained, is not substantially altered.

Before the act of last session came into operation, the application for a certificate of conformity was regulated by the 5 & 6 Vict. c. 122, s. 39, which enacted, that it should be lawful for the Court, on the application of the bankrupt, to appoint a public sitting for the allowance of the bankrupt's certificate, (of which 21 days' notice should be given in the *Gazette*, and to the assignee's solicitor,) at which any creditor of the bankrupt might be heard against the allowance, and the Court, having regard to the conformity of the bankrupt to the laws relating to bankrupts and to his conduct as a trader as well before as after his bankruptcy, should judge of any objection to the certificate, and allow, or refuse the same, or suspend the allowance thereof, or annex such conditions as justice required. This section contained a proviso, that no certificate should be a discharge unless the Court certified to the Court of Review, that the bankrupt made a full discovery of his estate and effects, that there did not appear any reason to doubt the truth or fulness of such discovery, and that he had in all things conformed, and unless the bankrupt made oath in writing, that the certificate was obtained fairly and without fraud, and moreover, that the Court of Review confirmed

such certificate, against which confirmation any of the creditors might be heard.

The corresponding section of the 12 & 13 Vict. c. 106, (which is the 198th,) it will be observed, differs in various particulars from that for which it was substituted. It is as follows:—

“That forthwith after the bankrupt shall have passed his last examination, the Court shall appoint a public sitting for the allowance of his certificate, (whereof and of the purport whereof 21 days' notice shall be given in the *London Gazette* and to the solicitor of the assignees,) and at such sitting the assignees, or any of the creditors of such bankrupt who shall have given to the registrar of the Court three clear days' notice in writing of his intention to oppose, may be heard against the allowance of such certificate; and the Court, having regard to the conformity of the bankrupt to the Law of Bankruptcy, and to his conduct as a trader before as well as after his bankruptcy, and whether the allowance of such certificate be opposed by any creditor or not, shall judge of any objection against allowing such certificate, and either find the bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such conditions thereto as the justice of the case may require.”

Under this section, it will be observed, that it is not left to the bankrupt to apply, or omit to apply for a public sitting for the allowance of the certificate: it is imperative on the Court *forthwith*, after the bankrupt shall have passed his last examination, to appoint a certificate meeting. There was good reason for this change of the law. It was constantly found that a bankrupt who had misconducted himself and came before the Court, under circumstances which rendered it unlikely that he should obtain a certificate of conformity, whilst his misdeeds were fresh in the recollection of the Commissioner before whom he was examined, lay by and did not claim a certificate, until

the creditors from whom he apprehended opposition, ceased to attend to the matter or were conciliated, and the Commissioner had forgotten the facts of the case. The delinquent bankrupt then gave 21 days' notice in the *Gazette* and to the assignees' solicitor, and came up for and obtained his certificate, frequently in the absence of all his creditors, and without any reference to or recollection of his demerits. Formerly the bankrupt paid all the expenses connected with the certificate meeting. As the meeting is now to be appointed by the Commissioner *ex mero motu*, it is to be presumed, that the costs of the certificate, like other expenses incidental to the proceedings in bankruptcy, must be paid out of the estate.

The second novelty introduced by the section above-cited, is the provision obliging the creditor to give "three clear days' notice" to the registrar of his intention to oppose. From the mode in which the section is framed, it admits of some doubt, whether the necessity of giving notice extends to the assignees as well as to creditors, or whether the provision only affects individual creditors desiring to oppose. Be this as it may, the regulation introduced by this provision is one of doubtful expediency. It may be convenient for the Court and for the bankrupt to know, whether any and what creditors intend to oppose a certificate, but on the other hand, it constantly happens, that creditors know nothing of the bankrupt's application for his certificate, until they find it announced in the daily newspapers, on the morning of the day for which the certificate is fixed, that it is the intention of the bankrupt to apply for his certificate. Undoubtedly, the meeting has been advertised 21 days before in the *London Gazette*, but who reads the *Gazette*? So far as regards the punishment of delinquent bankrupts, the defective operation of the law is mainly attributable to the inertness of creditors and their indisposition to come forward and state their individual grounds of complaint. The regulation adverted to, requiring a three days' notice, creates an additional difficulty and discouragement to creditors. It is quite true, that by the practice of the Insolvent Court, notice is required of opposition to debtors seeking for their discharge from prison, under the act 1 & 2 Vict. c. 110; but if the regulation now introduced into bankruptcy practice has been borrowed from the Insolvent Court, the analogy should be carried out, and rendered complete by imposing on the officer

of the Court the duty of giving notice to every creditor who has proved, that the bankrupt is coming up for his certificate at the place, day, and hour fixed for the meeting.*

Before the passing of the 12 & 13 Vict. there might have been some doubts whether the Commissioner was justified in suspending or refusing the allowance of the certificate, when no creditor appeared to object to it. On this, as on many other points, the practice of the Commissioners was far from being uniform. It is now, however, expressly declared, that the Commissioner shall exercise his discretion, and allow, suspend, or refuse the certificate as he thinks fit, whether the certificate "be opposed by any creditor or not."

As it is endeavoured by a subsequent provision, to which we shall hereafter more particularly advert, to define the offences which are to subject a bankrupt to the suspension or refusal of his certificate, it would have been desirable that the unbounded discretion with which the Court is invested, when called upon to determine generally as "to the conduct of the bankrupt as a trader before as well as after his bankruptcy," had been in some respect qualified or explained. It must be admitted, however, that the mere omission of the words cited, without other extensive alterations, would have involved consequences prejudicial to the due administration of the Bankrupt Law.

The proviso added to the 39th section of the 5 & 6 Vict. c. 122, and above referred to, is not re-enacted by the 12 & 13 Vict. c. 106, which, however, provides for the form of the certificate by the 199th section, and with regard to certificates allowed before the commencement of this act, expressly dispenses with the confirmation by the Court of Review as required by the 5 & 6 Vict. The words of this section are:—

"That the certificate of conformity under this act shall be in writing under the Seal of the Court and the hand of the Commissioner,

* In a late case, *In re Litchfield*, 6th Nov., 1849, Mr. Commissioner Holroyd held, that the 198th section requiring three days' notice of opposition to a certificate by an individual creditor, did not apply to the case of an adjourned certificate where the bankrupt had applied for his certificate before the 12th October last when the act 12 & 13 Vict. c. 106, came into operation, and the consideration of the application was then postponed to a future meeting. *Cooke* for the bankrupt and *Bagley* for the creditor.

and shall certify that the bankrupt has made a full discovery of his estate and effects, and in all things conformed, and that, so far as the Court can judge, there does not appear any reason to question the truth or fulness of such discovery, (and shall be in the form contained in the schedule Z. to this act annexed or to the like effect,) and notice of the allowance of such certificate, *and of the class thereof*, shall be advertised in the *London Gazette* in such manner as may be directed by any rule or order to be made in pursuance of this act. And any certificate of conformity allowed by any Commissioner before the time appointed for the commencement of this act, though not confirmed according to the laws in force before that time, shall discharge the bankrupt from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the fiat."

By the words printed above in italics, and the reference in the form specified in the schedule to three classes of certificates, the legislature has introduced an entirely new feature in the administration of the Bankrupt Law, and called upon the Commissioner to certify, whether the bankruptcy *has* arisen from unavoidable losses and misfortunes, or *has not wholly* arisen from unavoidable losses and misfortunes, or *has not* arisen from unavoidable losses and misfortunes, and to award a first, second, or third class certificate accordingly. Unless in so far as it may involve matter of feeling, the effect of a second and third class certificate are precisely similar, but a proviso is added to the 195th clause, which establishes the rate of allowance to be paid to a certified bankrupt, in proportion to the dividend paid to his creditors, "that the Court shall, if it think fit, reduce any allowance in case it shall have only granted the bankrupt a certificate of the second or third class." A first-class certificate, therefore, entitles a bankrupt to his allowance as of right, whilst it may be reduced at the discretion of the Court where a second or third class certificate is granted.

The operation of the certificate when obtained, as already intimated, is not materially affected by the act now in force. The 6 Geo 4, c. 16, s. 121, and the stat. 5 & 6 Vict. c. 122, s. 37, both enacted, that a bankrupt who had conformed in all things should be discharged from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the commission or fiat, in case he obtained a certificate. These sections also provided, that the bankrupt's discharge should not operate to discharge his partner or co-contractor. The new act (by section

200) refers the discharge of the bankrupt directly to the certificate, but makes no difference as to the extent to which the discharge shall operate. It is in these terms:—

"That the certificate of conformity allowed under this act, subject to the provisions herein contained, shall discharge the bankrupt from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the bankruptcy: Provided always, that no such certificate shall release or discharge any person who was a partner with such bankrupt at the time of his bankruptcy, or was then jointly bound or had made any joint contract with such bankrupt."

The 201st section of the new act is a re-enactment of the provisions of the 6 Geo. 4, c. 16, s. 130, and the 5 & 6 Vict. c. 122, s. 38, which prohibited the granting of a certificate, and avoided it, if granted, where the bankrupt lost by gaming 20% in one day, or 200% within 12 months, or 200% by stock-jobbing, or concealed or destroyed books, or made fraudulent entries, or concealed any property, or permitted fictitious debts to be proved.

The 40th section of the 5 & 6 Vict. c. 122, which avoids any contract or security given to induce a creditor to forbear opposition to a certificate, is also re-enacted by section 202, with the addition only of the words, "or to forbear to petition for the recall of the same," explained and rendered necessary by the new provision introduced by section 203, which we annex:—

"That at any time within six months after any certificate of conformity shall have been allowed, and subject to such order as to deposit of costs as may by any general rule or order to be made in pursuance of this act be directed, any creditor of the bankrupt, or any assignee, official or other, may apply to the Vice-Chancellor that such certificate may be recalled and delivered up to be cancelled; and the Vice-Chancellor may, on good cause shown, order such certificate to be recalled and cancelled."

An important change is introduced by the new act as to the liability of a certificated bankrupt, upon a contract made after his bankruptcy in respect to an antecedent debt. By the 6 Geo. 4, c. 16, s. 31, and the 5 & 6 Vict. c. 122, s. 43, a bankrupt was discharged from liability in such cases, unless he made a promise in writing. By the 12 & 13 Vict. c. 106, s. 204, the bankrupt is not liable upon any promise, verbal or written, to pay a debt barred by the certificate. The words of this section are as follow:

"That no bankrupt, after his certificate shall have been allowed, shall be liable to pay or satisfy any debt, claim, or demand from which he shall have been discharged by virtue of such certificate, or any part of such debt, claim or demand, upon any contract, promise, or agreement made after the issuing of the fiat or filing of the petition for adjudication of bankruptcy, and if any bankrupt be sued upon any such contract, promise, or agreement, he may plead the general issue, and give this act and the special matter in evidence."

By section 205 of the new act, the provisions of the 6 Geo. 4, c. 16, s. 126, and 5 & 6 Vict. c. 122, s. 42, that a certificated bankrupt shall be free from arrest, and if taken in execution may be discharged, and that the certificate shall be evidence of the bankruptcy and proceedings, are re-enacted without variation.

It will be found, when we come hereafter to consider the appellate jurisdiction as created by the recent act, that there is an appeal to the Vice-Chancellor sitting in bankruptcy upon all matters connected with the certificate; and in order to give effect to the right of appeal, the following provision is made by section 206, which is altogether new.

"That no such certificate shall be delivered to the bankrupt until after the expiration of the time allowed for entering an appeal; and if an appeal be duly entered against the judgment of such Court, for the allowance of the certificate, or for the refusal, the withholding, or the class of the certificate, and notice thereof be given to the Court, in such manner as may by any general rule or order to be made in pursuance of this act be directed, the certificate shall be further kept by the Court, and abide the judgment of the Vice-Chancellor thereupon; and upon any appeal duly entered and prosecuted relating to the certificate or to the judgment of the Court as to any offence under this act charged against the bankrupt, the Vice-Chancellor shall have power to rescind or vary the order of the Court below, or to make such other order thereon as he may think fit; and upon an order for the allowance of any certificate by the Vice-Chancellor, and whether with such conditions or not, or after a suspension thereof by order of the Vice-Chancellor or not, such certificate may be allowed and signed by the Court below, or by the Vice-Chancellor."

The last section comprehended in the division of the act which relates to the certificate of conformity, whilst it declares that the order for the refusal, or suspension, or allowance of a certificate by the Court, shall be final unless appealed against, authorises a re-hearing when there is reason to believe that the order was obtained on false evi-

dence, or by an improper suppression of evidence, or by fraud. This provision, which introduces an important alteration in the procedure in bankruptcy, is contained in section 207, and is as follows:—

"That the allowance of the certificate by the Court, and any order for the refusal or suspension of the allowance thereof, except in case of appeal, shall be final and conclusive, and shall not be reviewed by the Court, unless the Court shall thereafter see good and sufficient cause to believe that the allowance of such certificate, or the refusal or suspension thereof, has been obtained on false evidence, or by reason of an improper suppression of evidence, or has otherwise been fraudulently obtained; in any of which cases it shall and may be lawful for the Court, upon the application of the bankrupt, or of any creditor of the bankrupt, and subject to such order as to deposit of a sum for costs, and to such notices to the bankrupt and to creditors by advertisement or otherwise as the Court shall think fit, to grant a rehearing of the matter and to rehear the same accordingly, and upon such rehearing the Court shall make such order as to the allowance of the certificate, or the refusal or suspension thereof, as the justice of the case may require, in like manner, upon like conditions, and having regard to like circumstances, so far as the case will admit as upon an original hearing, and in case the certificate shall have been previously allowed, and upon such re-hearing the allowance thereof shall not be confirmed, such certificate shall have no force or effect whatever, and the same shall be delivered up to the Court and cancelled."

A series of provisions are embodied in the division of the act, relating to "Offences against the Law of Bankruptcy," which are more or less connected with the subject of certificate and the law bearing upon it. These provisions, however, will be more conveniently examined and discussed hereafter, when we proceed to treat of that branch of the law under which the framers of the act have classed the enactments referred to.

PRIVILEGES OF COUNSEL AND ATTORNEYS.

INSOLVENT CASES IN THE COUNTY COURTS.

THE question of the "Province of the Bar" to *exclusive* audience in all Courts has been just revived in one of its most objectionable forms, and to the manifest injury of the public. It seems that wherever there is an opportunity offered to an attorney to advocate the interests of his client before a Court of whatever limited jurisdiction, he must be doomed to *silence*,

and the client compelled to employ an advocate whom he does not want, and at an expense that he can ill afford, or submit to an entire denial of justice.

The members of the Bar, so soon as they are called to their honourable and important duties, have an undoubted right to appear in all Courts however humble; and we do not question that it is for the interest of the suitors to be enabled, when they require it, to procure the aid of barristers, who by their learning and talents may promote the ends of justice. We contend only, that the suitor should be at liberty to confide his case in these Inferior Courts to an attorney of his own selection, and that he should not be compelled to incur the expense of employing counsel. We think, also, most sincerely, that the younger members of the bar might safely depend upon their services being called into action whenever the difficulty or the importance of a case required their aid. In truth, an attorney incurs less responsibility and trouble, in preparing a brief for counsel, (and he derives more profit,) than in conducting the case himself; and wherever the value of the property or the circumstances of the case will justify it, he will be ready to avail himself of the aid of the Bar. We think, therefore, that it is equally for their interest and their dignity that the Bar should not call upon the judges of the Inferior Courts to give them *exclusive* audience.

The County Courts, it will be recollected, have been established for the express purpose of conducting the matters before them cheaply and expeditiously. Barristers are limited to a fee of one guinea, and attorneys to 10s., or at most 15s. It is evident that the great majority of the suitors are expected to conduct their own cases. The legislature, in abolishing the circuits of the Insolvent Debtors' Commissioners, and transferring their duties to the judges of the County Courts, surely intended that the business should be conducted in the same manner as the other business of the Court, and that attorneys who are deemed competent to conduct a trial before a Court and Jury, are also qualified to examine an insolvent, and address the Court on the question, whether he should or should not be entitled to "the benefit of the act." It cannot, therefore, be of any public advantage that the creditor of an insolvent, who wishes to inquire into the disposition of the property, and the state of the affairs of the insolvent, should be precluded from putting

his questions or making his observations through the medium of his attorney, and be driven to the necessity of preparing a brief for counsel.

Upon the rule established in the case of the *Queen v. The Justices of Denbighshire*, 32 L. O. 323, "that exclusive audience be granted at all times when four barristers are present at the General Quarter Sessions," the question we presume cannot be raised in the County Court, unless there be four barristers actually present.

The revived controversy has occurred under the following circumstances:—

At the County Court, York, held on the 16th November, before Mr. Serjeant Dowling, the new judge of the district for the North Riding of Yorkshire, a question was raised regarding the *exclusive* audience of members of the Bar in insolvency cases before the County Courts. The following is the report of the discussion from the *Leeds Mercury*:

Mr. Blanshard proceeded to apply to the judge for an order or rule of practice, that in all cases of insolvency sent to this Court from the Insolvent Court in London, the gentlemen of the Bar should have exclusive audience. The learned counsel stated that the subject had been brought before the late judge (Mr. Wharton), but he had not come to any determination upon it; and added, that the judges in some of the County Courts had complied with a similar application, whilst others had refused it.

Mr. Holby, clerk to the magistrates at Market Weighton, of York, Mr. Barker, of Huddersfield, and Mr. Courtenay, and Mr. Harle, of Leeds, (who happened to be in Court,) severally addressed the judge, in opposition to the application, urging that the right of audience had been fully conceded to solicitors by the Legislature, both in the County Courts' Act and the Bankrupt Acts, and that the recent act, by which insolvency business was transferred to this Court, had not retracted or infringed upon this right of audience. They also urged that the judge should not come to any determination until they had had an opportunity of giving the application further consideration;—to which the judge assented.

At a later hour of the day, as Mr. Barker, the senior attorney present, again addressed the judge, and, on behalf of his brethren present and himself, submitted that from time immemorial attorneys have had and exercised the right of audience in the County Court, and repeated the arguments adduced in the earlier part of the day, that such right had been confirmed and extended by the County Court Act; and with respect to insolvency matters, that it was a mere addition of business which the Legislature plainly intended should be conducted there in the same way as other business; and lastly, that without an express enactment, the general right of audi-

ence of attorneys could not be restricted or interfered with. Mr. Barker further contended, that the question was one of a public character, the principle upon which the County Courts had been extended being one of economy both to the debtor and to the creditor; and in a speech of great ability brought various considerations to bear upon the question, for the purpose of showing the inconvenience and injury that would result to the public from the application being granted.

Mr. *Blanshard* replied, contending that, although attorneys might have possessed the right of audience in the County Court, with which the Bar did not desire to interfere, nor with the right of being heard in insolvency cases over which the Court of Bankruptcy recently had jurisdiction, yet that in insolvency cases arising under the 1 & 2 Vict. cap. 110, the Bar have always had exclusive audience before the Court in London, and the Commissioner on circuit, and, therefore, that the right claimed by the Bar was no invasion of the attorneys' right, because they never possessed any right in the matter. Further, that the County Court Act and the Bankruptcy Act afforded no argument, inasmuch as in those the right was given, not conceded.

The learned *Judge*, at the conclusion of the argument, stated that the subject was one of considerable public importance, and that he should therefore consult the Attorney and Solicitor Generals and other authorities on the subject, before making up his mind, and promised to communicate his decision at the next Insolvent Court day.

It should be added, that Mr. Barker expressly stated that the views he advanced were merely those of his brethren present and himself, and should not be binding upon the profession unless they chose to adopt them, and that it was proper that the law societies should consider the matter.

LAW OF ATTORNEYS.

EXPARTE ORDER TO TAX.—IRREGULARITY.—WAIVER.

IN a case recently reported, *In re Mackrill*,* an agreement was signed 20th Nov. 1846, between M., who had been appointed the local solicitor of a projected railway company, and four members of the Finance Committee, by which he agreed to take a sum of 1,753*l.* in full of all demands (subject to the correction of any errors in the adding up of the bills of costs delivered.) It was also agreed that the balance, after allowing the balance of the cash account, should be paid within seven days. Upon the delivery of the cash account, however, the committee declined to pay the amount

agreed on, and M. accordingly brought his action to recover the balance. An *order of course* for taxation had been obtained *ex parte* on June 14, 1847, and for staying the proceedings in the action. The appointment to attend the Taxing Master on June 17, was postponed by M.'s London agent to 26th July, and further postponed over the vacation, and on Oct. 29th, M. gave notice of motion to discharge the order.

Kindersley and *Glasse*, in support of the motion; *Turner*, contra.

The *Master of the Rolls* discharged the order with costs, and said that "such an order ought not to have been obtained; and if an application had been immediately made, it would certainly have been discharged. I do not mean to say that such an irregular order may not be waived; but I think it should be waived in some clear and unequivocal manner, so as to leave no doubt upon the mind of the Court, that the parties intend to waive it." * * * * "Here, perhaps, it was imagined, on one side, that there had been a distinct verbal waiver; the other side most positively denies it. I cannot, therefore, come to the conclusion that there was a waiver. I think that, if there was a waiver, it ought to have been evidenced in a much more formal manner than appears here. The case, therefore, rests entirely upon this:—whether the acquiescence in the appointment for the purpose of proceeding in the taxation before the Master is to be considered as amounting to a waiver. I am clearly of opinion that it does not." * * * * "If any costs have been occasioned by these attempts to proceed before the Master, my opinion is, that they ought to be set off against the costs with which the respondents are to be charged. I am led to mention this, because I think that the London agent of the solicitor ought not to have kept this secret in his own breast, if he intended to take advantage of the irregularity of the order. His right, and perhaps his duty towards his client, clearly entitled him to take the objection; but he should not have proceeded ambiguously—he should have said, 'I intend to go before the Master upon the warrant, but mind I object to this order from the beginning.' I do not say a party is bound from the first to know that an order is irregular, because it very often happens that the objection is not discovered until the order has been proceeded upon; and if he was not aware of the irregularity, I should not consider it objectionable for him to complain of the order afterwards. There

* Reported 1: *Beav.* 42.

ought to be a fair and open dealing, and a party ought not to arrange to proceed on an order, and then, by objecting to it, take the other side by surprise. If a party intends to object to an order for irregularity, he ought to do so from the first."

LAW OF TITHES.

SALKELD, CLERK, V. JOHNSTON AND OTHERS.

WE have from time to time referred to the particular circumstances and stages of this cause; to the hearing before Vice-Chancellor Wigram, in 1841, when the plaintiff had a decree for an account and payment of the particular tithes demanded by his bill, to the hearing of the appeal from that decree by Lord Lyndhurst, L. C., in 1843, by whom a case was sent for the opinion of the judges of the Court of Common Pleas, but without reversing the Vice-Chancellor Wigram's decree; to the admissions made and entered into on both sides by the statements introduced into the case as stated under Lord Lyndhurst's order on the appeal; and to the opposite certificates returned thereon from the four judges of the Court of Common Pleas, before whom the case as so stated was argued. We have also adverted to the hearing of the cause on further directions and costs before Lord Cottenham, on the return of those certificates in November, 1847, when his lordship directed the same case to be stated for the opinion of the judges of the Court of Exchequer; to the subsequent alterations in the case so stated as agreed upon by the parties, and made under Lord Cottenham's order of the 20th Jan. 1848, introducing into the case the question in *Fellowes v. Clay*, (namely, that of a total nonpayment of all tithes during the statutable period,) and to the particular terms of the certificate returned from the judges of the Court of Exchequer before whom the case as so amended was argued, excluding the question upon the pleadings upon which the Lord Chancellor has now dismissed the bill.

Having to this extent noticed the previous weight of authority as to the construction of Lord Tenterden's Tithe Act; and having considered the Lord Chancellor's judgment upon the construction of the statute with the attention to which from his lordship's great experience in tithe causes, and great ability as a judge, it is so eminently entitled, we are desirous of now submitting to our readers some observations on the reasoning in the judgment upon which his lordship's

conclusion as to the construction of the statute is founded. In general it may be observed, that in the controversy as to the true construction of the statute both parties are agreed as to the grounds upon which they arrive at such opposite conclusions. This is said more particularly in reference to the broader question, in *Fellowes v. Clay*, which must be considered and disposed of before the narrower question in this case, namely, that of the non-payment of some tithes, other tithes, during the statutable period having been paid to the particular tithe owner, can properly be considered. Each of the parties in the controversy found their conclusion upon the fact of the enactment treating modus and discharge "as one and the same for the purposes of the act, and providing the same remedy for each," and upon that consideration the Lord Chancellor founds his construction of the statute,—in reference to the previous state of the law,—His lordship having first adverted to the case of a composition real, afterwards observes in his judgment:

"Proof of immemorial payment of a modus and non-payment of tithes in kind, was a sufficient defence against the claim for tithes, upon the ground that prescription is held to be proof of a grant or arrangement about the property which the parties were competent to enter into; but the immemorial payment was only evidence of the agreement, that being the foundation of the right claimed. In the ordinary case of a discharge, claimed upon the ground of the lands having belonged to one of the greater monasteries dissolved by Henry 8th, the principle will be found to be the same. These monasteries were capable of holding their lands discharged from tithes—they were not necessarily so discharged, but the establishment was competent to hold them discharged. When, therefore, it appeared that no tithes had ever been paid by them, a discharge was presumed, as it might have had a legal foundation. Here, again, the non-render of tithes was only available as evidence of the supposed arrangement of the religious house, upon which the discharge at the present time rested. I am considering the case as if the religious houses had continued to this time and were in possession of the land, the statute Henry 8 having only given to the lay proprietors the same right which the religious houses had before enjoyed. In both these cases immemorial usage was necessary to establish the right claimed, the foundation of which could not be proved, but in fact such usage was in ordinary cases assumed upon proof of comparatively modern practice, but in both it was competent for the party claiming the tithe to meet such presumptive proof, for the purpose of showing that the conclusions to which it tended could not be well founded, and that in fact there was not a

legal foundation for the discharge claimed. In the case of a discharge by composition real, these principles were not strictly followed, nor in the rules which regulate all other cases of prescription."

His lordship then, after adverting to the disabling statutes in the reign of Elizabeth, and to the rule of law requiring a party setting up a composition real to produce the deed by which it was effected, or some evidence of its having been executed, and to Mr. Justice Erle's description of this as an anomaly, and observing, that in that case the difficulty was greater than the former, thus proceeds in his judgment. Such was "the state of the law and such the difficulty which persons holding land legally discharged from the payment of tithes in kind, had to contend with when compelled to defend such legal right" when Lord Tenterden's Act passed; and his lordship then proceeds to comment upon the enactments contained therein, upon the effect of which the controversy arises, but according to this introduction, in his lordship's judgment, the object of the statute must have been "*to remove the difficulty which persons holding land legally discharged from the payment of tithes in kind*" had to contend with, when compelled to defend such legal right.

Now applying this to the facts of this case, could any tithe lawyer rationally suggest that the lands occupied by the defendants in this suit were legally discharged from the payment of tithes in kind previously to the passing of the act? So far from the defendants in this case being then under any difficulty, was there any other possible reason for the non-payment of the tithes than the poverty of the incumbents, and the necessity of their resorting to a Court of Equity for the recovery of the tithes, and being there met by the unwarranted defence first pleaded by the defendants in this case, namely, that the right and title to the tithes demanded were vested in the rector? Certainly an alteration in the law was needed, and a less ruinous course and process for the recovery of the tithes required, but surely not an *ex post facto* law legalizing the non-payment induced by such a previous state of the law. No layman could, previously to the statute prescribe in *non decimando*, except in respect of monastery lands, which were privileged, and it surely could not have been intended by the statute by an *ex post facto* law to enable him to prescribe in *non decimando* in respect of *unprivileged lands*, and to

place all lands upon the same foundation. As the judges of no Court can agree as to the effect of the enactments in the statute, everything seems to turn upon the object of the statute. It cannot be supposed that it was a dishonest one, and that the legislature could have intended, under the pretence of removing difficulties in the way of persons holding land previously legally discharged, so to alter the law as to create an entirely new ground of discharge, and beyond the professed object of the statute to alter the rights of parties.

In no previous judgment have the objects of the statute been more clearly or ably defined than in the Lord Chancellor's judgment. His lordship, at the commencement of his judgment, observed the subject-matter of the act to be, "prescriptions or claims of or for any exemption from or discharge of tithes by composition real or otherwise." The whole controversy turns upon whether, under prescriptions or claims to an exemption from or discharge of tithes by composition real or otherwise proved to have existed, and to have been acted upon at the time or within one year before the passing of the act, any other than a previously legal exemption or discharge can have been intended, and whether because the word "claim" occurs in the 1st section of the act, though it is omitted in the 2nd section, it is intended (though "modus" is used in a proper sense, and a modus must be proved under the statute as before the passing of it,) that a discharge or exemption should not be so proved, and that the distinction between lands privileged as monastery lands and those unprivileged should be entirely done away, and "discharge or exemption" legally mean nothing. In a legal sense there could have been no previous exercise of a discharge claimed, except in respect of monastery lands.

In reference to the preamble of the act, the Lord Chancellor observes, that as to monastery lands, the ordinary mode of proving an exemption as to them was proof of modern non-payment, and as to composition real, (which could not have been created since the reign of Elizabeth,) that time as such never was requisite for those grounds of discharge, because time was only the medium of proof, and that the preamble is therefore obviously inaccurate in speaking of shortening the time required for the valid establishment of claims of modus and discharge, none being required; but surely there is some little refinement in that observation. The fact appears to be,

that those who drew the act intended to alter the law by introducing a general exemption as to all lands by proof of non-payment, but that as this (considering the previous state of the law) would have been obviously unjust, reasonable alterations were made in the act by those who passed it, and that if the terms of the act are construed in a legal sense and according to all previously established rules of construction, little real alteration in the law is effected. Why otherwise the long parade of circumstances attending the passing of the act and the complaints of Mr. Eagle adverted to in Lord Denman's judgment in *Fellows v. Clay*. The preamble states truly at least the expense and inconvenience of suits instituted for the recovery of tithes, and surely no better example of this could be afforded than the vexatious proceedings imposed upon the plaintiff, and the final result of this suit in the Court of Chancery.

GRANDEUR OF THE LAW.

THE EARL OF STRATHMORE AND KINGHORN.—BARON BOWES.

The ancient family of Bowes, of the County Palatine of Durham, is well entitled to a place in our collection of the legal worthies who largely contribute to the *grandeur of the law*.

The heralds begin this ancient family with Sir Adam Bowes, a successful lawyer and Chief Justice in Eyre, about 1300. (See 4 *Surtree's Hist. Durham*, 48, the family of Bowes, "Memorials of the Rebellion in 1569," 367.) It would take too much room to follow the long pedigree of this distinguished family, but we may briefly say, that Sir William Bowes is said to have been knighted at Poitiers. Sir Robert was made Knight Banneret, at the siege of Rouen; Sir Ralph was sheriff of the County Palatine, for 30 years, and was at the battle of Flodden Field, in 1513. Sir Robert Bowes was employed in border warfare, and was made Lord Warden of the East and Middle Marshes in the reign of Edward VI., and he was sworn to be one of the Privy Council in 1551, and in the following year he was appointed Master of the Rolls. On the death of King Edward VI., he signed the letter to the Princess Mary, to inform her that Lady Jane Grey was Queen, but notwithstanding this bold step, he was directed by the Privy Council to go to Berwick, in company with Lord Conyers, on public business. (See *Memorials of the Rebellion*, 367, &c.)

Sir George Bowes, another of the family was engaged in the service of the border, and in 1558, there being signs of a Popish rebellion fomented by several noblemen and men of rank, the Earl of Northumberland, and the Earl of Westmoreland, &c., Sir George Bowes was empowered to levy men for Queen Elizabeth. The Earls and their party, in 1558, boldly entered the city of Durham. This rebellion was, however, shortly put an end to, and the promoters, at least the poorer ones, were punished by many cruel executions. It is singular this rebellion is hardly mentioned in English History, but in the archives at Streatham Castle, Durham, the seat of the Bowes family, there was lately found a very large and precious collection of manifestos, documents, and letters, &c., which were a confused mass, but by the patient and patriotic labours of Mr. John Bowes, the late Sir Cuthbert Sharp, and others, they have been excellently arranged, and now form 18 volumes, with perfect indexes, in the possession of Mr. Bowes at Streatham Castle. This is an historical record of great importance, illustrating a neglected portion of history. The book referred to, "The Memorials of the Rebellion in 1569," 8vo., 1840, was also formed of them.

To return to the family of Bowes, Eleanor Mary, the sole representative of the Knight Marshal Bowes and Jane Talbot, and heiress of the house of Streatham, married, in 1761, John Lyon, the Earl of Strathmore and Kinghorn, who took the name of Bowes, and his eldest son, John Bowes, Earl of Strathmore, was created in 1815 an English Peer, by the name of Baron Bowes of Streatham Castle in the County Palatine of Durham, and of Lunedale in the County of York, as a compliment to the ancient family of Bowes and to its representative. The Earl and Baron died in 1820, and Thomas Bowes became Earl and Baron, and on his death his grandson, the present Earl of Strathmore and Kinghorn and Baron Bowes, succeeded.

REFORM IN THE PUNISHMENT OF CRIMINALS.

The attention of the legislature and the public has frequently been called to proposed improvements in the mode of punishing criminals. The following remarks in the *Times* of 18th September, are well deserving of the attention of Government:

"What must be done with the criminals of

the country? Evidently, the first and most striking evil of the old system was its want of classification. The prisoners sentenced to transportation were all huddled together under one comprehensive term and in one compendious doom. Yet how different were they, in character, in guilt, in temptation, in the advantages of fortune, education, and intelligence! How blind was the policy which confounded the coarse violence of the sottish and dull clodhopper with the refined wickedness of the astute and knowing Londoner—the deliberate and ingenious crime of the metropolitan proficient with the stupid docility of his ignorant and rustic follower! The consequences were such as might easily have been foreseen. Commingled and confounded in one judicial doom this motley crowd soon found its general level of impurity; the worst corrupted the bad, and the bad infected the stupid. States and societies were founded out of elements thus foolishly and hurtfully composed.

"This defect, with its consequences, is in the process of correction. It is easier than was once believed to classify prisoners. The tests applied are not indeed always infallible. The clever, experienced, and cunning criminals can always baffle the sagacity of chaplains, and the ingenuity of gaolers. Still, in a majority of cases, probationary treatment in combination with the record of the sessions and assizes, will go a great way to establish the character of a prisoner. At least, it will be generally possible to separate the depraved from the accidental criminals; the incurables from those who may be reformed. And it is a fortunate thing for society that the incorrigible do not constitute the majority.

"This being the case, the punishment of convicts may be distributed with greater advantage to themselves and the country than heretofore. It will thus be possible to apportion their just penalty to each, and to select a certain class, whose reformation, under given conditions, may be hoped and expected. These it will be advisable to transport to the colonies. Two considerations recommend this course.

"In the first place, England cannot undertake to keep all her *forçats* at home. It would be too costly and too dangerous an experiment. We should have to multiply our gaols and our police; and then we should hardly feel ourselves secure with such a community among us in times of pressure or political excitement.

"Again, the labour of convicts would be highly useful to many of our colonies. There are some kinds of public works which are absolutely necessary to the progress and prosperity of young colonies—roads, bridges, harbours, and tanks—which can only be completed by compulsory labour. This compulsory labour, we suppose, would not be deemed too harsh an exaction from the violators of their country's laws, and by employing it upon public works many of those enormities would be escaped which haunt the memories and exasperate the indignation of those who condemn

convict assignment most warmly. In addition to this, the colony would learn from such a beneficial application of an obnoxious service that its own advancement was perfectly consistent with the exercise of metropolitan authority; and the other party to the transaction—the convicts themselves—would obtain the means of regaining their lost respectability. Why should not Government introduce into the Cape such a modification of this system as would at the same moment ease the mother country, benefit the colony, and reform the convicts?"

VINDICATION OF MR. PHILLIPS IN COURVOISIER'S CASE.

THE imputation on Mr. Charles Phillips for improperly conducting the defence of Courvoisier on his trial for the murder of Lord William Russell has from time to time, during several years, been the subject of professional as well as public discussion, and we sincerely rejoice that Mr. Phillips, yielding to the friendly advice of Mr. Warren, has at length given a most satisfactory and complete refutation of every part of the charge against him.

Our readers will have perused the letters of Mr. Warren and Mr. Phillips in the columns of *The Times* of the 20th instant. We have not space at present either to republish or abridge them; but a short notice is due to the importance of the subject. Three distinct charges are stated in this correspondence as having been made against Mr. Phillips:—1st, For retaining the prisoner's brief after the murder was confessed. 2nd, For solemnly asserting his belief in the prisoner's innocence, and appealing to Heaven for his sincerity. 3rd, For attempting to throw the guilt upon other servants of the murdered nobleman.

Now, 1st. it is clear, according to the long and invariable usage of the Bar, and approved by the other branch of the profession, (who are the immediate legal agents of the accused,) that counsel must necessarily continue to hold their client's brief whether guilty or innocent. It is their duty to watch that the rules of evidence are strictly complied with; that every topic which the prisoner could himself address to the Court and Jury be urged, and that all objections whether in substance or in form are made on his behalf.

2nd. It is ascertained, beyond all doubt, that Mr. Phillips, in the whole course of his eloquent speech, never once asserted his belief in the prisoner's innocence, nor made the needless appeal imputed to him. Moreover, all the reports of the trial in the daily newspapers, contained no such asseveration

or appeal; and in addition to this, Mr. Phillips is enabled to refer to the high authority of Mr. Baron Parke, who was present at the trial, and entirely acquits Mr. Phillips of uttering any such statement.

3rd. According also to all the reports in the daily newspapers, there is a distinct and emphatic expression by Mr. Phillips against any imputation of guilt on the other servants of the deceased. It is true, that on the day previous to the confession, and when Mr. Phillips believed in his first instructions, that Courvoisier was innocent, he cross-examined the witnesses with a view of casting the criminality from his client to some other person; but he was then ignorant of the truth, which was the next morning confessed, whilst the prisoner was in the dock, and in the presence of Mr. Clarkson, the other counsel for the defence.

It may be regretted that Mr. Phillips, with such ample means of refutation, allowed the slander to take its course. We believe that the general impression was, that something to the effect, if not to the full extent, of the expressions imputed, had really been uttered, and that an excuse could alone be found in the zeal of an eloquent advocate pleading for the life of his client. If Mr. Phillips was right in disdaining to answer the charge whilst he remained at the Bar, Mr. Warren has forcibly argued that it was clearly his duty when elevated to a judicial position, to vindicate his conduct—for as a judge, he would be called upon to visit with censure, or punishment, those who deviated from the path of rectitude; and ill would such censures come from one who quietly submitted to reiterated accusations of speaking and acting a gross falsehood. It is gratifying to find that the character of the Bar has thus been vindicated, and the public will now be satisfied that no such dangerous practice as that imputed to one of its members can ever be sanctioned by the Bar.

SUGGESTED IMPROVEMENTS.

LAW REPORTING.—NOMENCLATURE.

To the Editor of the *Legal Observer*.

I VENTURE to draw your attention to a subject which has somewhat perplexed me in my searches into precedents, and has no doubt also annoyed some of your readers. It is the absolute want of connexion between the "Books" as cited, and the several Courts in which the cases referred to have been decided. This appears to have presented itself to the able reporters in the Common Law Courts, who have one by one called their reports by the name of the Court in which they were decided. Messrs. Adolphus and Ellis altered the citation of their work on the commencement of a new series in

the year 1843 to that of Q. B. reports; Manning, Granger, and Scott, of their works in 1846 to C. B. reports; and last, Meeson & Welsby, in 1849, to Exch. R.

In the House of Lords also, the reports of Messrs. Clark & Finnely are now cited as H. of L. reports, so that there only remain the Equity Courts with reports varying in nomenclature with the names of the several reporters. Would it not be a boon, alike to the barrister, the solicitor, and the student, if this glorious uncertainty were ended, if at a glance, each case could be referred to as the decision of the judge deciding the same? This alteration might easily be effected, for with the exception of the Lord Chancellor's Court, there is only one reporter to each judge. We might therefore have 1 M. R. instead of 1 Beav.; 1 V. C. E. for 1 Sim.; 1 V. C. B. for 1 De G. & S.; and 1 V. C. W. for 1 Hare. Changes would thus only take place in the two additional Vice-Chancellors' Courts, and would be much less frequent than under the old system, as will appear from the citation of the decisions by the Vice-Chancellor Knight Bruce being, 1. Young & Collyer; 2. Collyer; and 3. De Gex & Smale.

A STUDENT.

THE ATTORNEYS' CERTIFICATE DUTY.

To the Editor of the *Legal Observer*.

SIR.—I beg to differ from the opinion stated by a Solicitor of Fifty Years, in your last number, that some men of eminence considered that it would have been wise in the first instance to endeavour to effect a reduction of this iniquitous tax to *one-half*, and by-and-by to seek a removal of the remainder. I think that a great majority of my brethren are decidedly opposed to an instalment of justice, and I for one would not willingly accept it. I object to the tax altogether upon principle, as being most partial and unjust, and I do sincerely hope, that the Law Society will press for a total repeal, and that they and the profession at large will never relax in their efforts till they have obtained it.

A SOLICITOR OF 25 YEARS.

LAW APPOINTMENTS.

Her Majesty has been pleased to appoint John Lucius Dampier, Esq., Barrister-at-Law, to be one of the Commissioners to inquire into and report upon the rights or claims over the New Forest in the County of Southampton, and Waltham Forest in the County of Essex.

And the Lords Commissioners of her Majesty's Treasury have been pleased to appoint Joseph Burnley Hume, Esq., Barrister-at-Law, to be Secretary and Clerk to the said Commission.

The Queen has been pleased to appoint Henry John Glanville, Esq., to be Chief Justice for the Island of St. Christopher.

Her Majesty has also been pleased to appoint Henry Iles Woodcock, Esq., to be Chief Justice for the Island of Dominica.

Her Majesty has further been pleased to appoint Archibald Paull Burt, Esq., to be her Majesty's Attorney-General for the Island of St. Christopher.

Mr. L. Blackfer, Solicitor of the Customs in Ireland, has been appointed to the Solicitorship of the Customs in London.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 23rd Oct., to Nov. 16th, 1849, both inclusive, with dates when gazetted.

Collis, William Blow, Ellis Clowes, and Edward Uthoff, Stourbridge, Attorneys and Solicitors, so far as regards the said Ellis Clowes and Edward Uthoff. Oct. 23.

Finch, George William, James George Dobinson, and William Geare, 57, Lincoln's Inn Fields, Attorneys and Solicitors, so far as regards the said George William Finch. Oct. 23.

Hussey, John, and William Gale Coles, Crewkerne, Attorneys and Solicitors. Nov. 13.

Lepard, Samuel, David Williams, and Wm. Joseph Frederick Bannatyne, 9, Cloak-lane, City, Attorneys and Solicitors, so far as regards the said David Williams. Oct. 30.

Pollock, George Kennet, and Anthony Stevenson, 19, Essex-street, Strand, Attorneys and Solicitors. Oct. 30.

Westmacott, Henry Seymour, and John Alexander Mainley Pinniger, 28, John-street, Bedford-row, Attorneys and Solicitors. Nov. 9.

Yonge, John and Charles Hancock, 20, Tokenhouse-yard, City, Attorneys and Solicitors. Nov. 16.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act with date when gazetted.

Shipton, Joseph, Chesterfield, in and for the County of Derby. Nov. 13.

Craig, Charles Dixon, Shrewsbury, in and for the County of Salop. Nov. 13.

Fairthorne, Edward Falkner, Brackley, in and for the County of Northampton. Nov. 13.

Gunner, Charles James, Bishops Waltham, in and for the County of Hants. Nov. 13.

NOTES OF THE WEEK.

DEATH OF ONE OF THE JUDGES OF THE COUNTY COURTS.

WE noticed in our last the appointment of a new judge of the County Court. Another vacancy has since occurred by the death of Mr. D. C. Moylan, the judge of the Westminster County Court. Mr. Moylan held the office of judge of the Westminster Court of Requests, to which he was elected under the 8 & 9 Vict. c. 127, and his appointment under the County Courts' Act was afterwards confirmed by the present Lord Chancellor. Mr. Moylan went the Midland Circuit, and was called to the Bar in the year 1829.

NEW MASTER IN CHANCERY.

As we anticipated in our last number, the vacancy occasioned by the resignation of Master Wingfield, has been filled up without delay. John Elijah Blunt, Esq., the Equity Draughtsman, has been appointed Master in Chancery. Mr. Blunt was called to the Bar by the Honourable Society of Lincoln's Inn, in Trinity Term, 1822. He was much engaged in the preparation of Bills in Parliament for the present government.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Underwood v. Gee. Nov. 2, 1849.

ADMINISTRATION SUIT.—INJUNCTION.

Upon appeal from the Vice-Chancellor of England, held, that an injunction will not be granted, restraining the proceedings in a second suit for an account of profits under a former decree, until a decree be made in a former suit for an account generally against the intestate's widow and administratrix, the subject matter not being identical or inconsistent with each other.

In a suit instituted by a creditor for the administration of the intestate debtor's estate, against his widow and executrix, for an account, a petition had been presented by the defendant

for leave to carry on the business, and had been granted by the Vice-Chancellor of England. A decree having also been made in a second suit for an account of the profits received under the first decree, and an application to stay the proceedings in the second suit until a decree had been made in the first, on the ground that they were identical, having been refused by the Vice-Chancellor of England, this appeal was presented.

Rolt and Miller for the appellant, cited *Dryden v. Foster*, 6 Beav. 146; *J. Parker and Simons* for the respondent, cited *Rigby v. Strangways*, 2 Phill. 175.

The Lord Chancellor said, that as there was a difference in the relief sought by the two suits, the second one seeking an account of the profits subsequent to the order permitting the busi-

ness to be carried on, and which was not affected by the former order, the appeal would be dismissed with costs.

Roberts v. Roberts. Nov. 3, 5, 6, 1849.

NEW TRIAL OF ISSUE.—NEXT OF KIN.

Upon appeal, (affirming the decision of the Vice-Chancellor of England,) a motion for the new trial of an issue as to next of kin of intestate, was refused.

Semble, a new trial will be granted if it appear that new evidence had been discovered, or that the credit of the principal witnesses was impeached.

THIS was a motion, by way of appeal from the Vice-Chancellor of England, for a new trial of an issue, for the purpose of ascertaining whether the plaintiff was next of kin to the intestate, Catherine Lloyd. It appeared that the Vice-Chancellor had directed an issue to decide the question, and the parties deduced pedigrees from a common ancestor in 1690. The trial took place at the Chester Assizes before Mr. Justice Cresswell, and a verdict was found for the plaintiff. The defendants then moved for a new trial, on the ground that the verdict was against evidence, but the motion had been refused by the Vice-Chancellor, whereupon this appeal was presented.

J. Stuart, J. Parker, Amphlett, and Westby, for the appellants; *Bethell, Bazalgette, and Bramwell*, for the respondents.

The Lord Chancellor said, that it was not alleged that any new evidence had been discovered, and there was no reason to disbelieve the principal witnesses who spoke positively as to the facts of the case. The case had been sent for the purpose of assisting this Court in its judgment upon the facts, and it did not appear that the Court could be further aided by another jury returning a different verdict. The question was, not whether the verdict was right, but whether the verdict found, together with the facts and materials before the Vice-Chancellor enabled the Court to adjudicate in the matter. The motion must therefore be refused, with costs.

Cohen v. Wilkinson and others. Nov. 6, 1849.

INJUNCTION.—FORMATION OF PART ONLY OF RAILWAY.

Held, (affirming the decision of the Master of the Rolls,) that an injunction will be granted to restrain a railway company from constructing only a portion of the line of railway, which, by their act of parliament, they contracted to make.

An objection on the part of the plaintiff of acquiescence to such alterations not having been raised in the Court below, was overruled.

THIS was a motion to discharge an order of the Master of the Rolls, (38 L. O. 166,) for an injunction to restrain the Direct London and Portsmouth Railway Company from form-

ing their railway to Leatherhead only, and abandoning the construction of the whole line.

Matus and Bovill for the appellants; *Rolt and Cole* for the respondent.

The Lord Chancellor said, the Court would interfere to restrain the application to one purpose of money subscribed for another, and therefore, as the plaintiff had subscribed for a line from London to Portsmouth, the directors had no power to apply the plaintiff's money for a railway to Epsom only. As to the plaintiff's acquiescence, it appeared that no such case had been raised in the Court below, and it was sworn in his affidavit that he only knew of such intention to limit the line within 14 days of his filing the bill. The motion must be refused, with costs.

Nov. 14.—*Christ's Hospital v. Grainger*—Decree of Vice-Chancellor of England affirmed.

—14.—*Woods v. Woods*—Appeal dismissed.

—14.—*In re Dice Sombra, Esparite Shadwell*—Costs allowed incurred by solicitor in presenting petition to supersede lunacy commission, but disallowed of a second petition for the like object.

—14.—*In re Bagster*—Stand over.

—14.—*In re Anties*—Master's report confirmed, without prejudice to any proceedings taken in respect to breach of trust in the transfer of the fund.

—14.—*In re Popham*—Stand over.

—14.—*In re Thorp*—Stand over.

—14.—*Newton v. Manning*—Order for payment to daughter of lunatic of dividends in support of the father.

—14.—*In re Batson*—Order on tipstaff of the Court to execute warrant against party in contempt.

—16.—*In re Bartholomew's Trust*—Appeal dismissed with costs.

—14, 16, 17, 19, 20.—*Knight v. Majoribanks*—Cur. adv. vult.

—20.—*Pimm v. Insall*—Appeal dismissed with costs.

—20.—*Mangles v. Dixon*—Order of Vice-Chancellor Knight Bruce for injunction, discharged.

Rolls' Court.

In re Direct London and Portsmouth Railway Company. Nov. 8, 1849.

RAILWAY COMPANY.—PETITION UNDER 11 & 12 VICT. C. 45.—COSTS.

Where a petition was presented on 24th July for the dissolution and winding up of a railway company, and the 12 & 13 Vict. c. 108, was passed on August 1, and enacted that railway companies were not within the 11 & 12 Vict. c. 45,—it was dismissed, but without costs.

A PETITION had been presented on 24th July, under the 11 & 12 Vict. c. 45, by Mr. Cohen, a shareholder, for the dissolution and winding up of the above company, and on the 1st August the 12 & 13 Vict. c. 108 (the Joint-Stock Companies' Winding-up Amend-

ment Act,) was passed, and by section 1 provided that the 11 & 12 Vict. c. 45, should not apply to "railway companies incorporated by act of parliament." The petition could not, therefore, be proceeded with.

Turner and Cole for the petitioner; *Malins* and *Bovill* for the company.

The Master of the Rolls said, that as no blame could, under the circumstances, be imputed to either party, the petition would be dismissed without costs.

Nov. 14.—*Rodick v. Gandell and others*—Bill dismissed.

— 14.—*Bailey v. Birkenhead Rail. Co.*—Cur. ad. vult.

— 16.—*In re Strutt*—Order for reference by consent.

— 14, 16, 17, 19, 20.—*Blenkinsopp v. Blenkinsopp*—Part heard.

Vice-Chancellor of England.

Mackeating v. Smith. June 26, 1849.

SPECIFIC PERFORMANCE.—COSTS.

Where the defendant had contracted with the trustees of a building society to sell property and the deposit had been paid, and the defendant afterwards objected to certain alterations in the conveyance, and refused to complete without the payment of the whole purchase money, on the ground that the deposit was forfeited, the contract having expired by effluxion of time; a decree was made for a specific performance, with costs.

THIS was a bill for the specific performance of a contract entered into by the defendant to sell certain property at Liverpool to the trustees of the Free Gardiner's Building Society, for 2,160*l.* It appeared that upon some alterations being made in the terms of the conveyance, the defendant wrote to the trustees' solicitor, repudiating the contract unless the whole purchase money were paid, and contending that the contract had expired by effluxion of time, and the deposit of 700*l.* had been forfeited. The defendant having contracted with another party, Mr. Monk, in respect of the sale of the same estate, Mr. Monk had been made a defendant to this suit.

Bethell, *Rolt*, and *Eddis* for the plaintiffs; *Malins* and *Smythe* for the defendant *Smith*; *J. Parker* for other parties.

The Vice-Chancellor said, that as the defendant *Smith* had, by his objection of the lapse of time and the claim of the deposit, been the sole cause of the suit, he must pay the costs. The decree would be for the specific performance of the contract, with costs.

Benyon v. Nettlefold. July 2, 1849.

DISCOVERY.—DEMURRER.—IMMORAL CONSIDERATION.

A demurrer was allowed to a bill filed for a discovery of the consideration and terms of an instrument, and for an injunction re-

straining an action at law thereon, where the plaintiff admitted by his bill that he had participated in the immoral act which the deed was calculated to proluce.

THIS was a demurrer to a bill filed by the plaintiff to restrain an action at law brought by the defendants upon an instrument which the plaintiff alleged, though good on the face of it, was invalid as given for an immoral consideration. The bill also sought a discovery of the consideration for, and terms of, such deed.

Rolt and *Hare*, in support of the demurrer, cited 2 Russell on Crime, 686; *Rex v. Delaval*, 3 Burr. 1434; *Franco v. Bolton*, 3 Ves. 368; *Batty v. Chester*, 5 Beav. 103, as showing that this Court would not grant a discovery where, if granted, it would render the parties liable to an indictment.

Bethell and *Bird*, contra, cited *Gray v. Mathias*, 5 Ves. 286; *Smyth v. Griffin*, 13 Sim. 245; *Hawkins v. Hall*, 1 Beav. 73.

The Vice-Chancellor said, that as the plaintiff had admitted he was a participator in the immoral act in consideration of which he alleged the instrument to be invalid, the discovery would not be granted.

Demurrer allowed.

French v. Harrison. Nov. 6, 1849.

CREDITORS' SUIT.—MARRIAGE SETTLEMENT.—CONSENT OF WIFE.

Upon the marriage of two parties, certain stock was conveyed to trustees in trust for the husband and wife for life and afterwards to their issue. A power was also given to the trustees, with the consent in writing of the husband and wife, to invest the funds in the purchase of land. The husband applied to the trustees to invest part accordingly, and the purchase was made, but the conveyance made to the husband alone. Upon his death, indebted to creditors, held, that, as between the trustees and the husband, he must be held to have purchased for them, and that, therefore, the creditors had no claim on the estate so purchased.

UPON the marriage of Mr. and Mrs. Harrison, a settlement was executed and a sum of money in the funds vested in trustees for the benefit of the husband and wife for life and afterwards to their children, with power, however, to the trustees, with the consent in writing of Mr. and Mrs. Harrison, to sell the trust fund and invest it in the purchase of land. The husband afterwards applied to the trustees to invest the sum of 1,734*l.* in the purchase of an estate in Cornwall, to which they agreed, and the estate was accordingly purchased, but the conveyance was to Mr. Harrison alone. Upon the death of Mr. Harrison, leaving his wife and one child, considerably indebted, a creditors' suit had been instituted to establish their claim to the estate. A reference having been made to the Master, he found that the estate was in fact purchased for

the trustees, although the wife's consent had not been obtained in writing. A petition was now presented by the trustees to confirm the report, and a cross-petition by the creditors in the nature of exceptions thereto.

Stuart and Elmsley for the cross-petition; *Bethell, Roll, and Bazalgette* for the petition.

The Vice-Chancellor said, that, although there might be a question whether the widow and infant were bound by the transaction, yet as between the trustees and Mr. Harrison there could be no doubt that the estate was purchased for the trustees. The Master's report must, therefore, be confirmed, with costs to be paid out of Mr. Harrison's estate.

Nov. 14.—*Ashburnham v. Ashburnham*—*Cur. ad. vult.*

—16.—*In re Lancashire and Yorkshire Railway Co., Ex parte Smith*—Mortgagor, not company, ordered to pay costs of mortgagees.

—16, 17.—*Corporation of Berwick-on-Tweed v. Murray*—Motion granted to produce documents.

—17.—*Gleadow v. Hull Glass Company*—Order for an indemnity from defendant against all costs and liabilities under an agreement entered into by them.

—19, 20.—*Reid v. Longlois*—Order for production of documents, and extension for three months of time for showing cause.

Vice-Chancellor Knight Bruce.

In re Loyal Pride of the Thames Odd Fellows' Lodge. Nov. 9, 1849.

INJUNCTION.—TRANSFER OF STOCK.—FUTURE SUIT.

An order was made under the 5 Vict. c. 5, to prevent the transfer of two sums of stock standing in the names of the trustees of an odd fellows' lodge, upon an affidavit stating such intention to sell out and apply the proceeds contrary to the rules, and the application being with a view to a future suit.

This was a motion for an injunction under the 5 Vict. c. 5, to restrain the trustees of the above lodge from transferring two sums of 100*l.* and 50*l.* standing in their names as stock. It appeared that a bill was about to be filed against the trustees who had declared their intention of selling the stock and applying the proceeds in a manner contrary to the rules.

Elmsley, in support of the motion, cited *In re Marquis of Hertford*, 1 Hare, 584.

The Vice-Chancellor granted the order.

Nov. 14.—*Ex parte Hollingsworth and others, in re Direct London and Exeter Railway Company*—Master's order directing payment to official manager of moneys, under 11 & 12 Vict. c. 45, reversed.

—14.—*Ex parte Tilden, In re Crudgington and another*—Terms settled of special case.

—16.—*Ex parte Wilkinson, In re London, Brighton and South Coast Railway Company*—Petition granted.

Nov. 16.—*Ex parte Sheward*—Stand over.

—16.—*Ex parte Newcastle and Leeds Direct Railway Company*—Stand over.

—16.—*Ex parte Wexford, Waterford, and Valencia Railway Company*—Stand over.

—16.—*Ex parte Madrid and Valencia Railway Company*—Stand over.

—17.—*Padley v. Lincoln Waterworks Company*—Exceptions allowed to answer for insufficiency.

—17, 19.—*Tysen v. East and West India Docks and Birmingham Junction Railway Company*—*Cur. ad. vult.*

—19.—*Wood v. North Staffordshire Railway Company*—Motion for sequestration against the defendants refused with costs.

—19.—*In re Kollmann's Railway Locomotive and Carriage Improvement Company*—Motion to reverse Master's decision placing name of contributory on list, refused.

—20.—*Carter v. James*—Bill dismissed with costs.

Vice-Chancellor Wigram.

Marquis of Londonderry v. Ovington and others. Nov. 9, 10, 1849.

SUIT FOR TITHES.—TITLE.—ISSUE OR ACTION AT LAW.

In a suit by the impropriate rector of a parish to establish his right to the tithes of certain mortgage tenements enclosed in 1816, where the deeds were all inter partes, and no perception of tithe was shown, the bill was retained for a year, with liberty to establish the title at law by action or issue.

This bill was filed by the impropriate rector of St. Giles, near Durham, to establish his right to the tithes of certain burgage tenements enclosed in 1816, and on which it was alleged titheable matters had grown. The tithes of the parish had been annexed in the 12th century to the Hospital of St. Giles, and were afterwards, upon the dissolution of the lesser monasteries, granted to Sir William Paget, and subsequently by Edward the 6th to Lord Cockburn of Ormeston, from whom the plaintiff's title was deduced.

The Solicitor-General and J. Bailey for the plaintiff; Wood and Elderton for the defendants, occupiers of the burgage tenements enclosed in 1816.

The Vice-Chancellor said, that assuming the plaintiff had made out his title to the rectory and tithes, yet as the deeds were *inter partes* and no evidence had been given of any perception of tithe, the case could not be decided without a trial at law either by an action or an issue:—*Norbury v. Meade*, 3 Bligh, 211; *Marquis of Waterford v. Knight*, 11 C. & F. 653 and according to the latter decision therefore the bill would be retained for a year, with liberty to the parties to try their right at law, as they might be advised.

Nov. 14.—*Duke of Beaufort v. Morris*—Stand over for plaintiff to present petition for an issue.

—14, 16.—*Griffith v. Bicketts*—Stand over.

Nov. 17.—*James v. Lord Wynford*—Stand over to try issue at law.

— 19.—*Vincent v. Bishop of Sodor and Man*—Case directed to be sent to the Court of Exchequer.

— 17, 19, 20.—*Attorney-General v. Lawes*—Judgment on construction of will.

— 20.—*Mainwaring v. Bevor*—Motion for distribution of fund, to be paid to the children of testator's two sons when the youngest should attain 21, refused on the ground that other children might be hereafter born.

— 20.—*Thomas v. Roper*—Part heard.

Court of Queen's Bench.

Westaway v. Frost. Nov. 5, 16, 1849.

NEW TRIAL.—EXCESSIVE DAMAGES.—ATTORNEY.

A rule for new trial on the ground of excessive damages was refused in an action against an attorney, to recover the amount of debt and costs paid by the plaintiff in an action against his wife, and which the defendant had defended without his authority, and in which execution had issued against the present plaintiff therein, although the verdict was for 50l. more than the plaintiff had paid in that action.

This was a motion for a rule nisi, to set aside the verdict for the plaintiff, and for a new trial on the ground of excessive damages, and in arrest of judgment. The plaintiff had brought an action against the defendant, an attorney, for wrongfully appearing for him in an action against him by one Dyer, and defending the same without the plaintiff's authority. It appeared that Dyer had brought an action against the plaintiff upon a bill accepted by the plaintiff's wife for a debt due to one Westcott, for furnishing some houses belonging to her, and that she had thereupon called on the defendant and instructed him to enter an appearance, giving him at the same time 2l. The appearance was accordingly entered, and Dyer ruled to declare; execution then issued, but the claim was afterwards settled by the payment of 93l. debt and costs. A verdict having passed for the plaintiff with 143l. damages, the present application was made.

Manning, S. L., in support of the motion, said, that exclusive of the question whether the plaintiff's wife had authority to retain the defendant, the jury had awarded 50l. more as damages than he was entitled to recover.

The Court said, that there would be no rule in arrest of judgment, and after communicating with Mr. Justice *Cresswell*, who tried the action at the last Devonshire assizes, as to the amount of the damages, refused the rule.

Crowder v. Farrar. Nov. 6, 1849.

AGREEMENT TO COMPROMISE ACTIONS.—AUTHORITY OF ATTORNEY.

The defendant being advised to compromise two actions against him, authorised his son

to attend to the matter, and he was accordingly present when the defendant's attorney wrote a letter agreeing to compromise them upon certain terms. These terms not having been complied with, the plaintiff brought an action on the breach of the contract, and obtained a verdict. Quære, whether the attorney had authority to make such an agreement?

THIS was a motion for a rule nisi to set aside the verdict in this case and enter a nonsuit, and also in arrest of judgment. The action was brought on an agreement entered into by the defendant's attorney to settle two actions brought against the defendant, for an illegal distress and a trespass, upon certain terms. It appeared that the defendant had been advised to settle the actions, and had said his son should attend to the matter, and that the son was present when the letter, containing the agreement to settle, was written, and had stated that he might as well pay the money at once, but that he had postponed the payment till the following day, as he had not sufficient money with him. The money was not however paid, and the plaintiff brought this action and obtained a verdict. The defendant pleaded the general issue, and denied that he had authorised the attorney to settle the actions on the terms contained in the letter.

Knowles, in support of the motion, contended that the evidence did not show that the attorney had authority to make such an agreement, and could not, therefore, bind the defendant, but it was only an undertaking which the attorney was to induce his client to fulfil.

The Court granted a rule nisi.

Nov. 14.—*Regina v. Inhabitants of All Saints, Derby*—Rule absolute to quash order of Sessions, and order of removal affirmed.

— 16.—*Duke of Brunswick v. Harmer*—Rule for new trial refused.

— 16.—*Macnamara v. O'Connor*—Rule refused for new trial.

— 16.—*Bailey v. Braham*—Rule refused.

— 16.—*Howley, executors, v. Knight*—On special case, judgment for the plaintiff.

— 16.—*Baker v. Rush*—Rule nisi for new trial on the ground of misdirection.

— 16.—*Cooper v. Blozham*—Rule refused.

— 16.—*Smith v. Archibald*—Rule nisi for new trial.

— 16.—*Strutt v. Whitcombe*—Rule nisi for new trial on the ground of verdict being against evidence.

— 17.—*Regina v. Inhabitants of Wigan*—Rule discharged to quash order of Sessions.

17.—*Regina v. Inhabitants of Wolverhampton*—Rule absolute to quash orders of justices and of Sessions for maintenance of lunatic pauper.

Nov. 19.—*Regina v. Walker and another*—Cur. ad. vult.

— 19.—*Regina v. Smith*—Part heard.

— 20.—*Hockton v. Hall*—Special demurrer allowed.

Queen's Bench Practice Court.

(Coram Mr. Justice Wightman.)

Hodgkinson v. Thompson. Nov. 7, 1849.

JUDGE'S ORDER.—CONSENT.—ILLEGAL CONSIDERATION.

A rule nisi was granted to set aside a consent to a judge's order, and subsequent proceedings with costs where it was given to settle an illegal appropriation of money by defendant, and under the threat of a criminal prosecution.

THIS was a motion on behalf of the defendant's assignees, for a rule nisi, to set aside a consent to a judge's order, and all subsequent proceedings with costs, on the ground that the consent had been improperly obtained, and that it was given for an illegal consideration. The defendant was clerk to the plaintiff, and, having appropriated moneys belonging to the plaintiff, was informed that a criminal prosecution had been commenced, and thereupon he went to the plaintiff's attorneys, and it was agreed that in order to settle the matter certain book debts due to him should be assigned to the plaintiff. An assignment was prepared and executed by the defendant, who was told to go over the way and sign a paper. Upon going there, he was asked to sign a paper, and also if he had read it, and the defendant supposing it to be the assignment, replied that he had, and then signed it. It appeared that he had gone to the judge's chambers and signed a consent to a judge's order.

T. Jones, in support of the motion, contended that the consent was therefore improperly obtained, and that as it was given under threat of a criminal prosecution, it was illegal.

The Court granted the rule nisi, on the ground of illegality in consideration.

Nov. 14.—*Regina v. Davey*—Rule nisi for quo warranto to councillor of city of Exeter.

—14.—*In re Morris Griffith*—Rule nisi on attorney to pay money received in action for debt and costs.

—14.—*Regina v. Leeds, Dewsbury, and Manchester Railway Company*.—Cur. ad. vult.

—16.—*Regina v. Justices of Cambridge-shire*—Rule nisi on justices to enter continuances and hear appeals.

—16.—*Ex parte Thomas*—Rule nisi to discharge prisoner.

—17.—*In re Coroner for Leeds*.—Rule absolute for certiorari to bring up coroner's inquisition and depositions.

—19.—*Harrison v. Newton*—Rule nisi to rescind discharge and to issue another execution.

—20.—*Markwell v. Dyson*—Rule enlarged.

—20.—*Regina v. Partridge*.—Rule nisi for quo warranto to town councillor.

Court of Common Pleas.

Hickcock v. Smith. Nov. 8, 1849.

ABORTIVE RAILWAY COMPANY.—LIABILITY OF ATTORNEY FOR REFRESHMENTS.
Where an attorney to an abortive railway

company had sometimes ordered refreshments for the provisional directors, and had, when called on for payment, promised to see to it and get it paid, and had also subsequently paid money on account, he was held liable in an action to recover the balance, although the bill had first been made out in the name of the company.

Held, that the registry of shareholders had been properly rejected as evidence at the trial.

THIS was a motion for a new trial on the grounds of misdirection and improper reception of evidence. The action was brought by the keeper of Gray's Inn Coffee House against the defendant, an attorney, to recover the balance of an account for refreshments, &c., supplied to the members of the Devon and Bristol Railway Company. The provisional committee of the company had been appointed on September 1, 1845, and the defendant appointed attorney on September 21, and the orders for the refreshments were sometimes written by the defendant and sometimes by one of the committee-men. The bill had been first made out in the company's name and sent to the defendant, who had been requested to settle the claim, and had promised to see to it and get it paid, and subsequently had given 25*l.* in part payment. The defendant, at the trial before L. C. J. Wilde, tendered a register of the shareholders, whom he contended were the parties liable, but it was rejected, and the jury directed to find whether the defendant had or had not held himself out as responsible for the refreshments. A verdict having been returned for the plaintiff with 30*l.* 11*s.* 4*d.* damages, the present motion was made.

Pigott, in support of the motion, contended that the defendant had not given the orders in his personal capacity, but as the attorney to the company, and did not therefore pledge himself personally thereby, citing *Downman v. Williams*, 7 Q. B. 103; and also that as the plaintiff had, by making out his bill in the name of the company, elected to charge the company, he could not now charge their agent: *Thomson v. Davenport*, 9 B. & C. 78. The rejection also of the registry of shareholders was wrong according to Lord Dalhousie's Act.

The Court said, that the defendant's conduct when called on to pay tended to confirm the plaintiff in his belief that he was to look to the most active person for payment, and was sufficient to justify the finding of the jury. As to the rejection of the registry of shareholders, it appeared from the judge's notes that it had been withdrawn, but at all events it was properly rejected. The rule must therefore be refused.

—14.—*Edwards and another v. Jenous*—Judgment for the plaintiffs on special demurrer.

—16.—*Gibbons v. Bouillon and other*—Judgment for the defendants on demurrer.—

Nov. 16, 17.—*Porcher and another v. Gardner and others*—To be re-argued.

— 17.—*Duke of Brunswick v. Sloman and others*—Rule nisi to set aside *ca. sa.* and to discharge defendant out of custody.

— 17.—*Nind v. Arthur*.—Stand over for parties to settle whether new trial should be had or a special verdict.

— 17.—*Newton v. Chaplin*—*Cur. ad. vult.*

— 17, 20.—*Draper v. Count de Torre*—Rule refused for new trial.

— 19, 20.—*Berry v. Irwin*—Rule absolute to discharge defendant out of custody.

— 20.—*Camp v. Pope*—Rule nisi to discharge defendant out of custody.

Eschequer.

Barnewall, (P. O.) v. Sutherland. Nov. 5, 1849.

PUBLIC OFFICER, DEATH OF.—SUGGESTION OF SUBSTITUTION OF SUCCESSOR.—TRAVERSE.—DEMURRER.—PRACTICE.

A rule nisi was granted for a new trial or to enter verdict for defendant, where the original plaintiff, who sued as public officer of a banking co-partnership, died, and the new officer was substituted, of which change a suggestion was entered on the record and notice given thereof to the defendant on the day on which the cause was set down for trial, on the ground that no opportunity had been given the defendant of traversing the suggestion? Semble, that the provision in the 7 G. 4, c. 46, s. 9, that the death of a public officer shall not abate an action, is continued by the 7 & 8 Vict. c. 113, although not expressly re-enacted.

Quære, whether such a suggestion on the record ought to be traversed or demurred to?

In an action by the public officer of a banking co-partnership, the proceedings were taken in the name of one Taylor, but on August 6, the day on which the cause was set down for trial, notice was given to the defendant that Taylor was dead, and that the name of the new public officer, Barnewall, would be substituted, and a suggestion of such change was entered on the record. The trial took place at the last Croydon Assizes on August 18. This motion was therefore made for a new trial or to enter the verdict for the defendant on the ground that the defendant had had no opportunity of traversing the suggestion on the record. It was also contended that the action had abated by the death of the public officer, because, although the 7 Geo. 4, c. 46, s. 9, provides that the death, &c., of such officer shall not prejudice such action, the 7 & 8 Vict. c. 113, does not contain such a provision, and the plaintiff should therefore have stated that the company was formed before 6th May, 1844, when the latter act came into operation.

Gurney, Q. C., in support of the motion, cited *Brocas v. City of London*, 1 Str. 235; *Watson v. Quilter*, 11 M. & W. 760.

The Court granted a rule nisi upon the first

point, but held that the other objections could not be sustained.

Nottidge v. Ripley and another. Nov. 5, 1849.

ALLEGED LUNATIC.—MAINTENANCE AND MEDICAL TREATMENT.—SET OFF AS NECESSARIES.

Quære, whether defendants, who had advanced moneys for the maintenance and medical treatment of the plaintiff in a lunatic asylum, who, however, had been held not a lunatic, can set off such payments in an action for money had and received for the plaintiff's use?

Quære, also, whether such maintenance and medical treatment can under the circumstances be considered as necessities?

This action was brought to recover the amount of the dividends belonging to the plaintiff as money had and received to her use during her confinement in a private lunatic asylum. The defendants claimed to set off against this demand the expenses incurred on the plaintiff's behalf, for necessities supplied to her. A verdict having been taken by consent for the plaintiff, with leave, however, to the defendants to move to enter it for themselves, if the Court should hold that the right of setting off such expenses accrued to them under the circumstances, the present motion was made.

Sir F. Thesiger, in support of the motion, contended, that the plaintiff had been placed by her relatives in Dr. Stillwell's private asylum, under the authority of medical certificates, and that maintenance and medical treatment were necessary to a lunatic, and might as such be set off against the income; citing *Howard v. Lord Digby*, 2 C. & F. 634; *Peters v. Grote*, 7 Sim. 238; *Wentworth v. Tubb*, 1 Y. & C. Ch., 171; *Williams v. Wentworth*, 5 Beav. 325; *Nelson v. Duncombe*, 9 Beav. 211.

The Court granted a rule nisi.

Nov. 14.—*Atha v. Simpson*—Rule for new trial refused.

— 14.—*Aglionby v. Williams*—Rule refused for new trial.

— 14.—*Lingham v. Pearson*—Rule for new trial refused.

— 14.—*Cotey v. Salovey*—Rule refused for new trial.

— 14.—*Coles v. Wright*.—Rule for new trial refused.

— 14.—*Spottiswoode v. Barrow*—Rule for new trial refused on the ground of verdict being against evidence, but granted on the ground of misdirection.

— 16.—*Waring v. Sellers*—Leave to amend declaration in action for penalties under Municipal Corporations' Act, without costs.

— 16, 17.—*Cobbett v. Sir George Grey and another*—Rule discharged for new trial and verdict entered by consent for plaintiff on plea of not guilty.

— 17.—*Fullarton v. Vallack*—Rule refused or plaintiff, a captain's steward of one of her Majesty's ships of war, to give security for cost.

Nov. 19.—*Morrell v. Fisher and another*—Part heard.

— 20.—*Williams v. Thomas*—Rule refused.

— 20.—*Doe d. Jones v. Thomas*—Rule discharged.

— 20.—*Hitchins v. Monk*—Rule nisi for new trial.

— 20.—*Doe d. James v. Jones*—Rule nisi granted.

— 20.—*Howell v. Redhead*—Rule refused.

Court of Exchequer Chamber.

Nov. 20.—*Reg. v. Ths. Smith*—Stand over.

— 20.—*Regina v. Marsh*—Conviction reversed.

— 20.—*Regina v. Galliers*—Conviction affirmed.

Court of Bankruptcy.

(Coram Mr. Commissioner Fonblanque.)

In re Fuller. Nov. 7, 1849.

SECOND CLASS CERTIFICATE.—BANKRUPT.

A second class certificate was granted to a

*wine-merchant and club-house keeper, where the debts were 19,000*l.* and assets 2,500*l.*, and the books had been inaccurately kept.*

Semble, a third class certificate could only have been granted if it had been an ordinary case of a wine-merchant.

THE bankrupt, J. G. Fuller, was a wine-merchant in St. James's-street, and keeper of Boodle's Clubhouse. It appeared that the debts were upwards of 19,000*l.* and the assets 2,500*l.*, and that the books had not been very accurately kept.

Lawrance, in support of the application for a certificate; *Taylor* for the assignees, did not oppose.

THE *Commissioner*.—A first class certificate will not be granted where there are bad book-keeping and excessive discounts. If this had been the case of an ordinary wine-merchant, a third class certificate only would have been given; but the creditors were of course aware of the peculiar risks of the bankrupt's business, and a second class certificate would be granted.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1849.

Common Pleas.

Middlesex.

J. Duncan
Davies, Son, & C.
Rae and Brown
Watson and Sons
H. D. Pritchard
Karslake and Co.
Lonsdale
C. Robson
Bevan and G.

Stead—(Remanet)
Parker and another
McGregor
Bennett
Doe d. Goodwin, (pauper)
Hancock
Bluck, Clk.
Jay
Burke

S. J. Williams
S. J. Parsey
S. J. Bainbridge
S. J. Fitzgerald
Joyce
S. J. Somerville
S. J. Boys
S. J. Halksworth and another
S. J. Park Gate and Chester & Berkenhead Rail. Co.

Ca. Hodgson and B.
Covt. A. Haynes
Iss. J. G. Lander
Prom. Bevan and G.
Eject. Harris
Case, T. W. Burr
Prom. Gadsden and F.
Case, C. Pearson

Wilkin
Berry
W. R. Buchanan
T. Roberts
J. Barnard

Langton
Hoare
Colyer
Roberts
Consolidated Investment and Insurance Co.
Collier

S. J. Ray
S. J. Silverlock
Mayne
Lucas
S. J. Bullin
Nokes and another

Prom. Williams and M.
Tres. Lewis
Case, Newbon and Evans
Tres. W. D. Kent
Prom. Goddard and Eyre

Crawley

A. J. Lane
Cunningham
T. B. Howard
Henderson

Humphreys
White
Dawe
Werneck

Lancaster
Jolley
Cloud and another
Jacobs

Debt, Pontifex and M.
Case { Nokes in person
Johnson
Prom. Gray
Dt. Manning
Ca. Buchanan
Tres. Oliver

Court of Exchequer.

Middlesex.

Wain and P.
Miles and P.
Bisgood

Troup
Steiner
Greenland

S. J. Clayton
S. J. Heald and others.
S. J. Chaplin

Gov. Clayton and Co.
Ca. Hill and H.
Ca. Cattarns

De Medina	Skinner	S. J. London & Brighton South Coast Railway	Ca. Sutton and Co.
Smith and A. F. A. Lewis	Jones	S. J. Bryant	Pro. G. Walters, jun.
	Crouch	S. J. London & North Western Railway	Pro. Parker and Co.
Gregory, F., and Co.	Gregory and others	S. J. Miller and others—Stayed by order	Pro. Elmslie & P.—Miller & Horn
Loveland and B. James and Son	Herring	S. J. Klemen	Pro. G. H. Taylor
Currie and Co.	Owlett	S. J. Mayor, &c., of Rochester	Replvn. Wright and K.
S. B. Abrahams	Glenie	S. J. Haron de Delmar	Pro. Wilde and Co.
H. Weeks	Harris	S. J. Cobb	Biggood
Lake and Co.	Bond	S. J. Radcliffe	Pro. Westmacott and Co.
Hume and B.	Collins, clk.	S. J. Collins	Pro. Robinson and C.
J. Richards	Blane, exor., &c.	S. J. Broughton	Dt. H. G. Robinson
Chilton and Co.	Stredder	S. J. Campbell	Tres. Hartings
Jaquet	Doe d. Nixon & anr.	S. J. Preston	Ejt. White and Co.
Sudlow and Co.	Vickers (by proviso)	S. J. Shipton	Dt. Smedley and R.
A. R. Steele	Nevill	S. J. Mahon	Pro. Hodgson and B.
Raw	Wood	S. J. Hutton and another	Isa. T. Jones
T. Philpot, jun.	Turner	S. J. Laurie, knt., and others.	Pro. W. M. Webster
T. W. Gray	Vickers	S. J. Birch	Ca. In person
	Ambergate, Nottingham, and Boston and Eastern Junction Railway	S. J. Brandon	Dt. E. J. Sydney
Trail	Smith	S. J. Fitzmaurice	Pro. Johnston and Co.
Watkins and H.	Dalton	S. J. Leaveley and another	Ca. Fyson and Co.
Wright and Co.	Batey	S. J. Watson and others	Ca. Lefroy
E. Elkins	Prescott	S. J. Mahon	Dt. Hodgson and B.
Dodd and Co.	Sims and ors.	S. J. Brutton and another	Pro. Horsley
Parker and Co.	Fowler	S. J. Drake, clerk, &c.	Pro. Beavor and Co.
Ivimey	Nicholas	S. J. Heenan	Pro. Weale and B.
In person	Vardy	S. J. Haimes	Pro. R. Sargent
Letts	Tucker	S. J. Hill	Pro. Froggatt
F. P. Chappell	D'Arcy	S. J. Lambert	Few and Co.
Holme and Co.	Cooper and others	S. J. Miller, clk.	Cort. Lever
E. Lewis	Bull, admor., &c.	S. J. Ranken	Tro. Sudlow and Co.
W. Kinsey	Simpson, extrix., &c.	S. J. Earl of Mountcashell	Dt. G. Hensman
In person	Moss	S. J. Ryalls and others	Dt. W. Hartley
Poole and G.	South Devon Railw.	S. J. Saunders	Dt. Murray
Same	Same	S. J. Stevens	Pro. C. Stevens
S. Smith	Ford	S. J. Elliott and others	Tro. C. Browne
H. H. Beckett	Hinton	S. J. Equitable Gas Light Co.	Ca. Baker and Co.
Jerwood	Grafton	S. J. Lighton	Dt. Harris and W.
Gale	Hughes	S. J. Mullins	Tress. Olive
Cattarns	The Queen on the prosecution of Maudsley	S. J. Lowe and others	To Repeat Letters Patent
W. Meyrick	Gilkes and others	S. J. Gandell	Sleigh and R.
C. Bell	Diggle	S. J. The London and Black-wall Railway Co.	Pro. Lawrence and P.
Same	Same	S. J. Same	Proms. Stokes and Co.
Ker	Parfremont	S. J. Bending	Ca. Stokes and Co.
E. Govett	Russell and wife	S. J. Giddy	Ca. Govett
In person	Sutton	S. J. Boswell	Ca. Spiller
Gregson	Browning	S. J. Robins	Dt. Fallows
C. S. Hill	Bouguereau	S. J. Brett	Pro. In person
Clarke and Co.	Higgins	S. J. Townshend	Pro. Edwards and R.
Clayton	Brougham	S. J. Dufty	Pro. Blower and Co.
G. H. Lewin	Ellis	S. J. Lord Ingestre	Replev. C. Underwood
Wright, L. and S.	Cockram	S. J. Lewis	Pro. Younghusband
M. Turner	O'Connor	S. J. Bradshaw	Dt. Gregory, F. and Co.
F. J. Hand	Doe d. Banks and others	S. J. Gale	Ca. Symons
C. Lewis	Bott	S. J. Hickmott	Ejt. C. Wright
Maugham and Dixon	Wigmore (pauper) admor.	S. J. Jay	Pro. Whittaker
Same	Shaw	S. J. Bluck	Ca. Vallance
Westmacott and P.	Christie and others, assignees, &c.	S. J. Newton	Dt. Scott and T.
Same	Same	S. J. T. Massey	Pro. E. Saxton
W. Palmer	Palmer	S. J. Burge	Pro. Stanley
G. Blake	Hartley	S. J. Bosconi	Dt. W. Fisher
Freeman	Freeman (pauper)	S. J. Broadwood and others	Dt. Hooker
H. G. Robinson	Imrie and others	S. J. Armstrong	Tres. Futvoye and Co.
Same	Ivins	S. J. Lord Norbury	Cort. Gauntlett
H. Weeks	I. Smith	S. J. Bull	Dt. Westmacott and Co.
Burchell and H.	Burchell and others	S. J. Aldwell	Dt. Gregory, F., and Co.
Wellborne	Ruck and another	S. J. Ashwell	Pro. Edgar
			Dt. Tucker

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 1, 1849.  
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RUMOURD EXTENSION OF THE COUNTY COURT JURISDICTION.

THE report of an intended extension of the jurisdiction of the County Courts to cases where the sum claimed or demanded does not exceed 50*l*. is now obtaining renewed circulation, and some of our contemporaries have with seeming confidence announced, that under the direction of her Majesty's government the bill has already been prepared which is to effect this change, and that it will be submitted to parliament at the commencement of the approaching Session. Having failed, after very diligent endeavours, to trace this rumour to any authentic source, we must be permitted to doubt if it be not totally without foundation. At the same time, it must be admitted, that an active—if not an influential or extensive—body of persons have brought themselves to believe that the suggested extension of jurisdiction would advance their personal interests, and having in mind so many recent instances in which successive governments have adopted plausible projects advocated with pertinacity and a pretended regard for popular interests, we should not be surprised to find the scheme alluded to brought forward at a convenient season and supported by persons in authority. The proposal would not shock the prejudices of any political party—it does not call for the abandonment of any portion of the public revenue—it involves no surrender of patronage, and although it may prove detrimental to the mass of the community, and tend to make the million regard the administration of the law with diminished respect, that is everybody's business, and is not likely to have much influence when weighed against considerations of pressing expediency.

The simple extension of jurisdiction from
Vol. XXXIX. No. 1, 184.

20*l*. to 50*l*., without any accompanying alteration in the constitution or system of procedure established in the County Courts, would be, in every point of view, an unmitigated evil. £50, together with the expenses of a litigated suit in the County Court, indicates an amount of property the loss or gain of which involves ruin or prosperity to a numerous class of suitors. That the disposal of such an amount of property should depend altogether upon the unaided judgment and unfettered discretion of a single judge, is inexpedient and unreasonable, as well as at variance with the principles on which all our legal institutions are founded. The erection of a tribunal consisting of a single judge, who is to determine all questions of law and fact, and from whose decisions there is no appeal permitted, is a monstrous anomaly, only justifiable when the subject-matter upon which such a tribunal can be called upon to adjudicate is of so trivial a nature that even an erroneous decision is preferable to continued litigation, and in mercy to parties, whose pecuniary resources may be very unequal, they are prevented from expending their substance in a profitless dispute, where, as the phrase is, the game is not worth the powder and shot. It was upon this principle, we presume, that the Superior Courts of Common Law refused to entertain actions where the matter in dispute did not amount to 40*s*., and in deference to the same principle those Courts would not grant a new trial, although satisfied that a verdict was against evidence, when the subject of the action did not involve a claim exceeding 20*l*. in value, although when the failure of justice was produced by the improper admission or rejection of evidence, or by any misunderstanding or error on the part of the judge, the Superior Courts have never allowed the considera-

tion of possible or probable expense to stand in the way of a just determination of the case. It is to be lamented that these wise and well-founded distinctions were lost sight of when the statute 9 & 10 Vict. c. 95, became law; but the objections to the system created by that act would be incalculably increased if the jurisdiction embraced the decision of all ordinary claims amounting to 50*l*.

There is another branch of the County Court system, which, if it remained unaltered, at the same time that the amount of jurisdiction was extended, would work a grievous injustice to suitors,—we allude to the inadequate remuneration allowed for professional services. The absurdly low scale at which the act prescribes that the services of professional men should be compensated, was avowedly introduced under the impression that in the County Courts the services of professional men might be advantageously dispensed with, and that parties should conduct their own causes. The result has not justified the expectations of those by whom this part of the act was framed. It is found that where there is any matter really in dispute, parties cannot manage or conduct their own causes before the County Courts with convenience or advantage. The first proceeding—filling up a plaint—requires more consideration than one suitor out of ten can afford to give, and a greater degree of technical knowledge than one out of every twenty suitors is possessed of. Parties are therefore compelled to obtain some assistance. Ten or fifteen shillings, however, is the maximum amount which, according to the construction put upon the act by the Court of Queen's Bench, an attorney can receive in any case for his professional services in respect of a suit in the County Court. Let the judge of the County Court be ever so much impressed with the value of the services rendered by an attorney in the preparation or conduct of a cause tried before him—nay, let him be satisfied that without such services the ends of justice in that particular case would have been defeated—still his discretion, which in many points has no bounds, is strictly limited in this, and he can in no case award the attorney of the successful suitor a larger amount than the paltry sum already indicated. This regulation operates as a prohibition to the respectable and educated professional man. He cannot, even upon the solicitation of a client, attend to a County Court case without incurring a positive pecuniary

loss, and the consequence is that the County Court practice is, for the most part, left to a class of practitioners, many of whom are not fit, either with reference to their competency or integrity, to be entrusted with the interests of any suitor. It is scarcely necessary to add, that a scale of allowance proportioned to that which now exists, but ascending until the debt or demand reached 50*l*., would not mend the matter. A fee of 30*s*. for the recovery of 40*l*., or the successful resistance to a claim of that amount, would be quite as objectionable, as a fee of 15*s*. when the subject of the suit does not exceed 20*l*. It is not in proportion to the sum claimed or demanded that the attorney should be paid, but in proportion to the nature and extent of the services he has necessarily rendered in the conduct of the cause. It may be at once conceded that that no charges should be allowed to the attorney for services not actually performed.

Many persons, whose opinions are entitled to respect, whilst they are fully alive to the existence and prejudicial consequences of the defects in the constitution of the County Courts, to which we have above adverted, and of many others only a little less glaring, nevertheless contend, that the system is capable of amendment—that the County Courts afford a good basis, and that the extension of the jurisdiction, accompanied by judicious alterations—and with an appeal to the Superior Courts—upon any matter of law or evidence—might be found to work beneficially to all classes of the community. This view, we have some reason to think, has of late found favour amongst many of the junior members of the Bar, who derive little pleasure and less profit from sitting day after day on the back benches of the Courts in Westminster Hall, and imagine if the County Courts were placed on a different footing, and the jurisdiction increased to 50*l*., provincial Bars would be established in different districts of the kingdom, and “hope deferred” give place to something more solid and exciting. That the County Courts might be immeasurably improved and placed on a footing that could not fail to render them valuable auxiliaries to the Superior Courts, in administering justice in every part of the country, is a proposition which does not admit of argument. The rudest and worst constructed machine, if its defects are removed, and what is perfect and appropriate substituted, may be got to act satisfactorily. All we insist upon is, that to render the

County Courts endurable with an enlarged jurisdiction, the principles of their construction and the system of procedure arising thereout, must be essentially and extensively changed.

Still, the question remains, why has it now become necessary or expedient to transfer any portion of the jurisdiction exercised by the Inferior Courts of Law for so many centuries, to the County Courts or any other tribunal subordinate or co-ordinate? The business of the Common Law Courts certainly has not increased in such a ratio as to render the machinery provided by them for the administration of justice inadequate. The Uniformity of Process Act, and other measures for the improvement of the law, passed in the present and last preceding reigns, have taken away all ground for complaining that justice is unreasonably delayed in those Courts. In point of fact, dilatory proceedings are so much discountenanced in every stage, it is sometimes thought that the car of justice is driven too rapidly. The judges of the Superior Courts of Law, are equally diligent in the discharge of their duties, and deservedly enjoy the respect of the public in as high a degree as their predecessors have done. The various officers of the Courts—Masters—Barristers and Attorneys, in the discharge of their respective functions, manifest undiminished zeal and energy. The Courts have not in any respect forfeited the respect or confidence of the public.

Why then should it be deemed desirable materially to abridge the sphere of their usefulness? The only ground upon which the transfer of jurisdiction from the Courts of Common Law to the County Courts can be advocated with any show of reason is, that the costs of proceedings in the Superior Courts are frequently out of all proportion to the subject-matter of dispute. The existence of the evil and its magnitude are not disputed. The remedy is plain. Preserve the jurisdiction of the Superior Courts, but diminish the expenses of the suitors. The judges and the most important officers of the Courts are now paid by salaries and not by fees, and yet, fees to an enormous amount are extracted from the pockets of the suitors. Let all the officers be placed on the same footing and paid by salaries. Let fees be abolished, and justice cease to be sold in the Common Law Courts, and the proposition to transfer any portion of their jurisdiction to the County Courts, will meet with little encouragement from the public.

PRIVILEGE OF BARRISTERS AND ATTORNEYS IN THE COUNTY COURTS IN INSOLVENCY CASES.

THE question raised before Mr. Serjeant Dowling, the new judge of the Yorkshire District County Court, has excited much attention in the profession. Several of the Law Societies, in town and country, have taken the subject into consideration, and the learned judge, we understand, will give a full hearing to all the arguments on both sides of the question.

It is remarkable, that in the early part of the discussion at York, on the 16th November,* Mr. Blanshard, one of the local barristers, claimed exclusive audience in *all* insolvency cases, but when the matter was resumed in the latter part of the day, he confined his claim to those cases arising under the 1 & 2 Vict. c. 110, Lord Campbell's Act for the Abolition of Arrest and giving better Security over the Property of Debtors; and the learned counsel distinctly gave up the cases arising under Lord Brougham's Acts, 5 & 6 Vict. c. 116; 7 & 8 Vict. c. 96; and 8 & 9 Vict. c. 127. It would be important if it could be clearly arranged, that the discussion was to be limited to the former class of cases; but although Mr. Blanshard may fairly admit, on the part of himself and his brethren in the Yorkshire district, that their claim is so limited, we do not distinctly see how the rest of the junior bar in their several districts will be bound by such an arrangement. We recommend, therefore, that both classes of cases should be fully considered.

It will be recollected that the 1 & 2 Vict. c. 110, authorises the Insolvent Debtors' Courts to discharge persons out of custody, upon the surrender of their property, who are *within the walls of the prison*. And this was a very just distinction, for according to the old practice a prisoner might obtain leave to reside out of the prison "within the rules," as they were called, that is, in any private house or lodging within a certain distance of the gaol, giving security to confine himself within the rules. But these privileged persons, who often with money not their own, obtained the indulgence, were seen far away from their limits, expending what ought to have been divided amongst their creditors. Since, however, the abolition of arrest on

* See the Report, p. 57, ante.

mesne process, comparatively few persons are in actual custody, and the cases of this class must consequently be small in number.

Under the acts of Lord Brougham, insolvent debtors might obtain their protection from arrest without ever having been in custody; but this relief was confined to traders whose debts did not exceed 300*l.*, but other persons *not* traders might take the benefit of the act to any amount. Over both classes of insolvents,—small traders or not,—the Court of Bankruptcy had the sole jurisdiction; and, consequently, those applications were conducted by attorneys and solicitors without the assistance of counsel, except in cases where they were especially required. They exercised this right under the 1 & 2 Wm. 4, c. 56, (by which the Court of Bankruptcy was established,) and whereby attorneys and solicitors were expressly authorized to appear and *plead* in the Court of Bankruptcy without being required to employ counsel, except in proceedings before the Court of Review, and on Trials before a Jury, (sec. 10,) and this authority has been re-enacted by the 247th section of the statute of the last Session for consolidating and amending the Law of Bankruptcy, 12 & 13 Vict. c. 106.

By the 10 & 11 Vict. c. 102, the insolvency cases previously under the jurisdiction of the Court of Bankruptcy, by virtue of Lord Brougham's acts, were transferred to the Insolvent Debtors' Court in London, and the County Courts within the districts of which the defendants resided. It is surely unreasonable to suppose that, in this transfer of insolvency business to the professedly *cheap* Court for the recovery of small debts, in which the counsel's fee is limited to a guinea, and the attorney's to ten or fifteen shillings, the Legislature could intend that those insolvency cases should be conducted in any other way than the usual business of the County Court, where attorneys, equally with barristers, may be heard.

Let it be borne in mind, that as to the trading insolvents, their debts were limited to 300*l.*, and upon an average their assets would not be more than as many shillings, if so much. It is palpable, consequently, that the burden of briefs and counsel's fees could never have been contemplated except in occasional instances, in which the *honorarium* must either be limited to a single guinea allowed in the County Court on a trial before a jury, or discharged out of the private funds of the party. In transferring

insolvency cases from the Court of Bankruptcy to the County Court, the judge of the latter Court, is expressly by the fifth section of the 10 & 11 Vict. c. 102, constituted a Commissioner in Insolvency,—his clerk, the registrar,—and his bailiff, the messenger. Surely, therefore, the parties and their attorneys are entitled, in like manner, to act as in the usual and ordinary business of this "Poor man's Court."

We do not expect it will be contended that there is any greater difficulty in the cases under the 1 & 2 Vict. c. 110, than under the other acts, so as to justify a superior kind of advocacy; but in truth the attorneys, from their habits of business and their entering so frequently into the details of the affairs of traders and others, are for the most part better able than barristers to elucidate complicated accounts. As they are fully competent to conduct a trial before a judge and jury in the County Court, they must be able equally well to manage an insolvency case. Indeed the attorney prepares the petition and schedule, and consequently can best explain to the Court any particulars that may be required.

Previous to the time for entering into this grave discussion before the learned Serjeant—who has intimated his intention of consulting the Attorney and Solicitor-General, and other authorities,—we trust that the representatives of the Bar will deem it expedient to withdraw their claims,—not only because it will be an injurious interference with the rights of attorneys in the Small Debt Courts, but because it will be more consistent as well with the dignity as the interest of the Bar, to leave the attorneys and their clients to call in the aid of wigs and gowns when the urgency or magnitude of a case may require it. We believe that the number of briefs which will be delivered, without insisting upon exclusive audience, will be as great, if not greater, than if they were successful in the claim now under consideration. But above and beyond all, let it be remembered, that if the attorneys should be excluded from audience in the cases in question, the insolvents and their creditors will suffer a denial of justice in many cases, wherein it will not be worth while to incur the expense of preparing briefs and employing counsel. Thus, the frauds of insolvents may often escape detection and punishment,—greatly to the dissatisfaction of the injured parties,—to the encouragement of future misconduct, and the defeat of the real intention of the Legislature.

NOTICES OF NEW BOOKS.

The Bankrupt Law Consolidation Act, 1849, with Notes and an Introduction, stating the law and proceedings in Bankruptcy. By JOHN FREDERICK ARCHBOLD, Esq., Barrister-at-Law. Shaw and Sons.

The Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106; with copious Notes of Cases on the Law of Bankruptcy, and applicable to the construction of that Act. By LEONARD SHELFORD, Esq., of the Middle Temple. W. Maxwell, (late A. Maxwell and Son.)

Bankruptcy Consolidation Act of 1849, with Practical Notes. By CHARLES STURGEON, of the Inner Temple, Esq., Barrister-at-Law. Benning and Co.

The Bankrupt Law Consolidation Act, 1849, (12 & 13 Vict. c. 106,) with Introduction, Explanatory Notes, and a very copious Index. By EDWARD WISE, Esq., of the Middle Temple, Barrister-at-Law. John Crookford.

THE importance of the subject, the interest which the New Bankrupt Act created in commercial and trading, as well as in professional circles, and the peculiar circumstances which marked its progress through parliament, and rendered its provisions matter of curious speculation, at the moment when it received the Royal Assent, and issued from the press of her Majesty's printer, perhaps sufficiently account for the multiplicity of shapes in which the act is published, and the number of commentators it has already found. Without undervaluing the labour of any one whose name is associated with the printed editions of the Bankrupt Law Consolidation Act, we may be pardoned for observing, that until an act of parliament has come into practical operation, and the course of procedure under it is authoritatively defined, and until doubtful questions of construction arising upon its provisions have been not only "ventilated" but determined by judicial decision, the field of useful commentary is circumscribed, and the practical benefit to be derived from the suggestions of the most learned and experienced editors is necessarily limited. On the other hand, it must be admitted, however, that when an act of parliament is like the 12 & 13 Vict. c. 106—extensive and complicated—compounded of a portion of the law as it previously existed—mingled with numerous alterations and ad-

ditions—it is quite possible usefully to discriminate between the old and the new law—to direct attention to the changes introduced—to illustrate and explain the text by referring to decisions founded on analogous provisions, and to facilitate an acquaintance with its enactments by judicious arrangement and reference.

All this has been attempted, as regards the Bankrupt Law Consolidation Act, in the pages of this publication,—with what success our readers will judge—and it has been effected to a greater or lesser extent by the various writers whose names have been prefixed to this notice, each of whom has imparted to the edition of the act to which his name is attached, some distinctive character sufficient to recommend it to a considerable class of readers.

Mr. Archbold, who is a veteran law writer, and has conferred great benefits on the profession by his able and correct treatises on various branches of practice, has in this instance contented himself by publishing an edition of the act, with an introduction, embodying the alterations effected in the law, and pointing out with his usual perspicuity and accuracy, the course of procedure in Bankruptcy at each successive stage. The learned author has not incumbered the text with any lengthened notes, but has pointed out the new sections, and where the sections of this act are only re-enactments, specifying the acts in which they were heretofore found. Like all Mr. Archbold's books this little work has a full and correct index.

Mr. Shelford has long been favourably known to the public as a voluminous and learned legal writer; and the edition of the Bankrupt Act now published in his name, cannot fail to add to his reputation. His notes on many parts of the act are both copious and elaborate. The learned author states in his preface, (page 5,) that he has not had time "to follow out many important heads of the Law of Bankruptcy, nor to arrange all the materials which he has collected." The able and satisfactory manner in which many of the most important branches of the Law of Bankruptcy are treated in the volume before us, give occasion to regret that the learned author did not carry out the more extensive scheme he appears to have contemplated, and leads us to hope, that he will avail himself of an early opportunity to favour the profession with the result of those other researches which are now unavoidably withheld. Upon many important heads, such as "the Liability of

persons to become Bankrupt.”—“Acts of Bankruptcy in General,”—“the Reputed Ownership of Chattels,”—“Transactions not affected by Bankruptcy,” and “the Rights and Duties of Assignees,” Mr. Shelford’s notes contain well digested treatises, in which all the recent decisions will be found, and which, in fact, exhaust the subject. This volume also possesses the advantage of having an admirably arranged index, occupying nearly 70 pages.

The next writer in order of seniority on the Bankrupt Law Consolidation Act, is Mr. *Sturgeon*, who has already written more than one treatise on Bankruptcy and Insolvency, and who has had a lengthened practical experience of the course of proceeding in all matters coming before the Commissioners of Bankruptcy, to which frequent reference is made in the volume before us. In Mr. Sturgeon’s work the new portions of the act are intended to be printed in italics, although by some unaccountable inadvertence this idea is not consistently carried out. The volume, however, contains a great number of notes containing valuable hints as to the course of procedure at various stages in the prosecution of a bankruptcy, and also in relation to the novel system introduced by the act, as regards arrangements between debtors and creditors under the superintendence and control of the Court. Mr. Sturgeon’s work is dedicated by permission to Lord Brougham, whom he refers to in his preface as “that brilliantly talented nobleman whose legislative energies have been so unceasingly employed in the cause of humanity and civilization.”

Although the last mentioned, Mr. *Wise*’s work on the stat. 12 & 13 Vict. c. 106, is not less deserving of favourable notice. It was the earliest edition of this voluminous act presented to the public by any professional author, and although, as might have been expected, it reveals some excuseable evidences of haste, we do not hesitate to say that Mr. Wise, by this volume, has established his character, not only as a ready, but what is far better, as an accurate practical writer. The “Introduction,” consisting of nearly fifty pages, contains a clear and well-digested exposition of the subject-matter of the act, the notes, which are numerous, abound with references to leading decisions serving to illustrate the text, and in the Appendix are printed parts of the Bankrupt Statutes which are left unrepealed by the act of last Session, and some sections of previously existing statutes which are embodied in it. The Index is

copious and carefully framed, and the volume contains so much that is useful, that we participate in the hope expressed by the author, that he may, “at some future time present in a more complete shape the Law and Practice of Bankruptcy.”

The varied claims on our space at this busy season preclude the possibility of any more extended notice of the several volumes which the act of last Session has called into existence. We do not profess by a cursory reference of this description to do much more than direct attention to the names of the authors. Each of the works to which we have alluded has some peculiar features which may justly entitle it to a preference, and as it is too much to expect that they should purchase and peruse them all, we leave our readers to judge for themselves, not anticipating that the selection can in any instance produce disappointment.

ACTIONS ON BILLS AND NOTES.— DESCRIPTION OF PARTIES BY INITIALS.

THE parties to negotiable instruments constantly describe themselves only by their surnames and initials, and it was for some time supposed, that when parties were so described in a written instrument, there was no objection to describe them in the same manner in all legal proceedings, without alleging any excuse for not inserting the full Christian name. It is now however settled by considered decisions in all the Courts of Law, that a declaration on a bill or note describing any of the parties simply by initials, without more, is bad on special demurrer. The Act for the Amendment of the Law, 3 & 4 W. 4, c. 42, s. 12, undoubtedly enacts, “that in all actions on bills of exchange or promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the process or declaration, to designate such person by the same initial letter or letters, or construction of the Christian or first name or names, instead of stating the Christian or first name or names in full;” but no case is brought within this act unless it appear that the initials of the party only, appear on the document in question. It follows, that where a party is designated by initials in a bill or note when the instrument is declared on, if the initials are retained it must also appear

on the pleading that they are the same initials by which the party is designated in the written instrument. Therefore, in an action by an indorsee against the acceptor of a bill of exchange, where the latter was described in the declaration as "William Henry W. Calder," and the defendant demurred, upon the ground that the declaration was uncertain, inasmuch as it described the defendant by the initial letter only of one of his Christian names,^a the Court of Common Pleas refused to set aside the demurrer as frivolous. So, in a more recent case in the Exchequer,^b where the acceptor of a bill of exchange was described as "W. D. Hay," and this description was demurred to for insufficiency, after argument and taking time to consider, the Court held, that the designation was insufficient, and appearing on the face of the declaration, might be taken advantage of by demurrer. The same point in effect was decided by the Court of Queen's Bench, in a case where the drawer of the bill was described in the declaration by initials,^c and in a very recent case,^d the Court of Common Pleas intimated that the question must now be considered as settled, and that in every case where a party was described in the declaration by initials, or by a designation which could not be taken to be a name of baptism, some excuse should be given for omitting his true Christian name.

We make no apology for calling attention to these decisions, as declarations on bills and notes are constantly drawn by persons who may not have had time to peruse all the reports, and few things cause more annoyance and mortification to a professional man, than to find proceedings to obtain judgment for a just debt defeated or delayed by an inadvertency totally beside the merits of the case.

GRIEVANCES OF THE PROFESSION.

DELAYS AND INCONVENIENCE AT PARISH REGISTERS.

To the Editor of the Legal Observer.

SIR,—This case has just occurred to me:—A gentleman bought a penny form of a will, which he filled up by bequeathing his real and personal estate to his "female first cousins, aged above 20 years, and resident in Europe,"

and by appointing "the two eldest" of them "executors"—whether it ought to be "ores," "rixes," or "rices," he did not seem to know. There were 12 ladies answering this description, one of whom the testator contrived to disinherit by getting her to attest the will. It became necessary to prove two pedigrees—one on his father's and the other on his mother's side—in order to satisfy the Prerogative Court as to which two of these twelve ladies were the executors.

In order to make out one of the pedigrees, I had to examine the Register of Baptisms of the parish of St. Leonard, Shoreditch, and get a copy of an entry to annex to an affidavit of identity for the Prerogative Court. That is a thing I have very frequently done at this church without the slightest difficulty for a number of years past, but on this occasion, on calling on the parish clerk he informed me that the new vicar had taken the custody of the registers from him, kept them under his own key in the vestry room, was non-resident, but attended at the church from 10 till 11 A.M., during which hour only could the registers be seen. It being then 1 P.M., I was compelled to go again the next day at 10. I waited for the vicar till 20 minutes to 11, when I obtained the required copy, the vicar insisting on writing under it his certificate, which he assured me the law required, but which I immediately tore off and threw away. I have often tried to explain to clergymen that no deponent could swear that "I hereby certify, &c.," is "a true copy of the register," but have always found them incapable of comprehending the thing.

After this will was proved it was found by a search amongst the testator's papers that he had invested some money in consols in the joint names of his mother (who died four years before him) and himself. It became necessary, therefore, to make his mother "dead" in the bank books, which, since the late forgeries, can only be done by means of a copy of the register of burials and a declaration of identity, which must be lodged two days at the bank. This forced me to go again to Shoreditch church, where I took care to be punctually as the clock struck 10, when I was told the vicar did not attend there on Saturdays, and that I must come again. This, and my inability to go again before Tuesday, will force one of the executrices, who lives in the Isle of Man, to remain in London three days longer than she would otherwise have done.

Now, I do not complain of the vicar of Shoreditch in particular. He affords more accommodation to the public than very many others of the clergy, who have to a very great extent taken the registers into their own hands, most of whom in London and the neighbourhood are non-resident, and some of whom won't even trust their resident curates. I have met lately with one case where the register could be seen only at 9 A.M., before the clergyman went into the public school of which he was one of the masters, and another where

^a *Nash v. Calder*, 5 Com. Bench, 177.

^b *Miller v. Hay*, 3 Exch. Rep. 14.

^c *Levy v. Webb*, 17 Law Jour. Q. B. 407.

^d *Kinnerley v. Knott*, E. T. 1849, C. P.

it was to be seen only at 30 minutes to 11 A.M. on Wednesdays and Fridays, and a friend of mine, on applying some time since at a city church, where the health of the non-resident rector would not permit him to go out on any other day than Sunday, was informed that he must come either just before or just after the performance of Divine Service on the Sunday, and thus violate the Lord's Day Act by exercising his worldly calling on that day.

Neither do I complain of the clergy for taking the registers into their own custody "The law allows it:"—52 Geo. 3, c. 146, s. 5.* The custody of the clergyman is, no doubt the most proper custody, and it is immaterial to me whether I pay a fee to the person or the clerk; but I conceive that parish registers are public records, not the private property of the clergy; that the public have a right to inspect them at reasonable hours, on payment of the usual fee; and that, if the clergy will not, or cannot, themselves attend at such reasonable hours, they are bound to procure some trustworthy person to whom they can in their absence commit the custody of the keys. If you reason with them upon the great inconvenience and expense to which they put the public, they generally say,—“Why did you not write to me? I would have looked it out for you and given you a certificate.” If you endeavour to point out to them that their certificate will not answer your purpose, they pity your ignorance and lay down the law to the contrary. This sort of thing must be so great a nuisance to gentlemen in extensive practice, that I trust some remedy will be contrived.

J. C.

CHARGE FOR SEARCHES.

I am at a loss to understand why 1s. per folio is charged for a copy of a will in the York Diocesan Registry, and 8d. per folio in London, while solicitors are only allowed 4d. per folio. Also, why 1s. a year should be charged for searching the Parochial Register of Shore-ditch, and only 1s. for 300 years elsewhere? Perhaps Lord Brougham will turn his attention and effect a remedy.

CIVIS.

RETURN OF PROBATE DUTY.

SIR,—Knowing your desire to give due support to all things beneficial to the profession in any of its different branches, I am induced to trouble you with these few remarks upon the regulations adopted at the Return of Probate Duty Office, with the hope that through your comment they would eventually reach the ears of the Comptroller of Legacy Duties and his consideration.

* This, by the way, is the statute which, enacting one penalty only by section 14,—that is 14 years' transportation,—directs by section 18, that one-half of it shall go to the informer, and the other half to the poor or to charitable purposes, to be appointed by the bishop.

The practice, as no doubt you are aware, when any party requires to obtain back any part of the duty overpaid on the ground of mistake, is to make the usual affidavit that the true value of the estate and effects of the deceased have been ascertained within six months previous to the time of swearing the affidavit, and giving an explanation of how the mistake arose; the claim is entered in the usual way, and afterwards an inner clerk looks over the affidavit, and if the claim is a proper one and allowed by him, you are told to call in about *ten days*, when the warrant for the allowance will be ready.

But mark the difference,—if you are going to pay additional duty, the affidavit is looked over at once and the warrant given to you, upon which you proceed to get it marked by the Commissioners and pay the additional amount and get the stamp altered on your probate. Why, therefore, the stamp authorities should take ten days to do that which they will allow you to complete in one morning only, I am at a loss to know.

At the expiration of the ten days you call to see if the warrant of allowance is made out, when you have placed in your hands a printed question, whether all duty has been paid at the Legacy Department, which you must get answered satisfactorily in another department before receiving the warrant. It very often happens that when you receive this question to be answered in the Legacy Department that you find the clerk engaged two or three deep with other accounts; but having got it answered you return to the Probate Duty Office and may find the clerk there then engaged two or three deep also entering fresh cases.

Supposing, therefore, this printed question to be given out at the time the claim for a return is considered allowed, the party would take his own opportunity of getting it answered before coming for the warrant; but it is not unfrequently happens, and must always to executors themselves and parties not fully conversant with the practice of the office, be the first intimation to them that legacy duty must be paid upon the amount to be returned before the warrant is actually given out upon which they are to receive such return, and if you have happened to have made your visit to Somerset House sometime after 2 o'clock, you may find it, if either of the above difficulties occur, most likely to cause you another journey in consequence of your not being able to get through each department before 3 o'clock.

E. C.

[We believe that the gentleman at the head of this department of the stamp duties is a very able and efficient officer and much respected by the profession; but the number of clerks is too small for the despatch of business at certain times, though on the whole it is said the staff is sufficient. Our correspondent's observations will, we trust, receive the attention of the proper authorities.—Ed.]

NOTES OF THE WEEK.

DEATH OF THE CHIEF REGISTRAR OF THE
BANKRUPTCY COURT.

We regret to record the decease of Mr. Serjeant Lawes, the much-respected Chief Registrar of the Court of Bankruptcy. The learned serjeant was a pupil of the late Mr. Tidd, in 1797, and continued not less than five years with that eminent lawyer; he afterwards practised several years as a special pleader, and was called to the Bar by the Hon. Society of the Middle Temple, Hilary Term, 1810; he was next promoted to the degree of Serjeant-at-Law in 1827; and appointed Chief Registrar of the Court of Bankruptcy on its establishment, in 1831. We need scarcely say, that a more excellent officer, or upright and amiable man, is not to be found in the profession, and during his practice at the Bar he was distinguished for his patient research, his extensive knowledge, and sound judgment.

VACANCY IN OFFICIAL ASSIGNEESHIP.

A vacancy has occurred amongst the official assignees of the Court of Bankruptcy in London, by the sudden death of Mr. Turquand. This office will probably be conferred on some commercial person of influence with "the powers that be." It is unfortunate that attorneys and solicitors are not famous for their knowledge of accounts; otherwise an attorney of experience and skilled in book-keeping would be a very fit person,—for the official assignee should be able to detect the ingenious frauds, covered by a semblance of legality, as well as the skilful fabrication of false and delusive accounts.

ANNUAL REGISTRATION AND CERTIFICATES
OF ATTORNEYS AND SOLICITORS.

SATURDAY, the 15th December, being the

last day for paying the Certificate Duty of Attorneys and Solicitors for the ensuing year, it may be useful to remind them that, in order to obtain the Registrar's Certificates of their being duly qualified, the Declaration of the time of Admission, according to the 6 & 7 Vict. c. 73, signed by the attorney or his partner, or his London agent, should be left at the Office of the Incorporated Law Society, Chancery Lane, on or before Saturday, the 8th December.

We understand that upwards of 5,000 certificates have been completed and signed by the Secretary of the Society, acting as Deputy Registrar, but several thousands yet remain to be prepared. The declarations should not be left later than the 8th, for then it will be impossible to issue them within the time required.

THE NEW JUDGE OF THE WESTMINSTER
COUNTY COURT.

It is rumoured that Mr. Serjeant Gascolee will be the successor of the late Mr. Moylan.

THE LATE EXAMINATION.

We understand that several applications were made to the Examiners to review their decision or afford a re-examination, but the fullest consideration having been given on the day after the examination to the queried cases, the indulgence could not be granted. There has been no re-examination in the same term since the year it commenced.

LAW PROMOTIONS.

The appointment of Mr. Blunt, as one of the Masters in Chancery, which we mentioned last week, has been officially confirmed in the *Gazette* of Tuesday, 27th Nov. A lucrative appointment has to be bestowed on the successor of Mr. Blunt in the office of Junior Counsel to the Attorney and Solicitor-General in Charity cases.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Smiter v. Ferguson. Nov. 5, 1849.

SET-OFF.—COSTS AT LAW, AND IN EQUITY.

Semble, costs at law cannot be set-off against costs in equity.

This injunction, granted by the Vice-Chancellor Knight Bruce, to restrain the defendant from practising as a surgeon at Macclesfield, having been discharged with the costs below, (*ante*, p. 45.)

Russell, for the plaintiff, suggested that they might be set off against the costs, which amounted to 135*l.*, due to the plaintiff at law.

Bacon, contra.

The Lord Chancellor held, that costs at law

could not be set off against costs in this Court, and therefore refused the application.

Nov. 21.—*Earl of Alvanley v. Lord Knaird*—Order of Vice-Chancellor of England varied and no costs on either side to be allowed.

— 21.—*North v. Morley*—Decree of Vice-Chancellor Wigram affirmed with costs.

— 21, 22.—*Onslow v. Wallis*—Decree of Vice-Chancellor of England affirmed with costs.

— 22.—*In re Vale of Neath Brewery Company, Ex parte Hitchcock*—Motion dismissed on the ground of defective notice.

— 22.—*Sawyer v. Mills*—Order staying

proceedings on payment into Court the amount claimed.

Nov. 22, 23.—*Taylor v. Taylor*—*Cur. ad. vult.*

— 23.—*Corporation of Rochester v. Lee*—Appeal from Vice-Chancellor Knight Bruce allowed, and bill retained for a year, with leave to plaintiffs to bring action at law.

— 23.—*In re Dyos Sombre*—Stand over.

— 23.—*In re one of the Coroners of Salop*—Application to set aside writ for election of coroner refused.

— 21, 24.—*Scarfe v. Souby*—Appeal from Vice-Chancellor of England allowed.

— 22, 24.—*Andrews v. Walton*—Motion refused to discharge prisoner in custody under attachment for non-payment of costs; but by consent order made for discharge.

— 23, 24.—*Cuddon v. Morley*—Decree of Vice-Chancellor Wigram affirmed with costs.

— 24.—*In re Hurwood, Ex parte Hurwood*—Stand over.

— 24.—*Newman v. Hutton*—Order of Vice-Chancellor Wigram affirmed.

— 26.—*Knight v. Majoribanks*—Appeal from Master of the Rolls dismissed with costs.

— 26.—*Williams v. Hodge*—Order of Vice-Chancellor Knight Bruce discharged with costs.

— 26.—*Ashley v. Alden*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 26.—*In re Earl of Albermarle*—Petition granted for the brother to attend the commission *de lunatico inquirendo* issued in this case.

— 26.—*Ex parte Spooner, In re Payne*—Petition refused to order retired Bankruptcy Commissioner to assign his pension, or to order the Accountant-General to pay it to the petitioner.

— 26.—*Berry v. Attorney-General*—Petition for rehearing ordered to be taken off the file, no leave having been obtained.

— 26.—*Saunders v. Walter*—Motion dismissed with costs.

— 26.—*In re St. Michael's, Shrewsbury*—Order for payment to next of kin of party of weak mind of compensation paid into Court by railway company.

— 27.—*Shrewsbury and Chester Railway Company v. Chester and Holyhead Railway Company*—Injunction restraining alteration in management of defendant company.

— 27.—*Chambre v. Siggers*—*Cur. ad. vult.*

Rolls' Court.

Dugdale v. Dugdale. May 24, Nov. 8, 1849.

REFERENCE TO ASCERTAIN NEXT OF KIN.—COSTS.

Held, that the costs of ascertaining a testator's next of kin were to be borne by the testator's estate, and not by the fund to be divided, where the question was raised under the will, and the fund could not be distributed without such inquiries.

THE testator, Henry Dugdale, by his will dated 17th December, 1839, devised a real estate to the plaintiff, William Stafford Dugdale, for a term of 1000 years, upon trust to

raise 2,000*l.* for the testator's next of kin at his decease, paternal and maternal. The Master, upon a reference to him, had found that Louisa Ann Dilke and E. Parks were the next of kin, *ex parte paternâ*, and Charles Baldwin, *ex parte maternâ*. The fund had been raised and paid into Court, and a petition presented for payment out of their respective shares with costs.

Turner for the next of kin *ex parte paternâ*; Daniel for those *ex parte maternâ*; in support of the petition; Stevens for an infant intitled in remainder, contra.

The Master of the Rolls said, the question as to the next of kin had been raised by the testator's will, and the fund could not have been distributed without ascertaining who the next of kin were. The costs of such an inquiry must therefore be borne by the testator's estate.

Nov. 22.—*In re Williams*—Stand over to next seal.

— 21, 22, 23.—*Blenkinsopp v. Blenkinsopp*—*Cur. ad. vult.*

— 23.—*Solomons v. Laing*—Stand over to Dec. 4.

— 24.—*Hobson v. Neale*—Stand over.

— 24.—*In re John Baker's Trust*—Order for payment of fund into Court as prayed.

— 26.—*Kelly v. Cheswell*—Judgment on construction of will.

— 26.—*Attorney-General v. Walmsley*—Stand over.

Vice-Chancellor of England.

Parsons v. Benn. Nov. 12, 1849.

ATTORNEY.—PARTNERSHIP.—DISSOLUTION.—COSTS.

Where A. and B. were in partnership as solicitors, and B. had quitted the town at which they practised and never returned, on the ground, as he alleged, of A.'s having spread false reports respecting him, but for which an indictment, although preferred by B., was not prosecuted: Held, that the allegation was answered by the non-prosecution of the indictment, and a dissolution decreed from the time of B.'s leaving the town, with costs.

RICHARD PARSONS and Richard William Benn carried on business as attorneys and solicitors in partnership from 1833, at Mansfield, Notts., and in May, 1845, Richard Joseph Parsons, a son of the plaintiff, was taken into partnership. In April, 1848, Mr. Benn left the town in consequence, as he alleged, of certain reports circulated by the plaintiff against his moral character, and after his departure, the plaintiff discovered that he had received and not accounted for various partnership monies and disposed of certain railway shares, and had also taken away an indenture of mortgage, to which he was only in part entitled. The plaintiff, in June, 1848, obtained an injunction *ex parte*, to restrain the defendant from interfering in the partnership business. The de-

creditor preferred a bill of indictment against the plaintiff for spreading injurious reports respecting him, but the defendant not appearing to prosecute, it was dismissed. The bill was now filed for the dissolution of the partnership from the 11th April, 1848, and for a reference to take the accounts, and for a continuance of the injunction.

Bethell and Glasse in support of the petition; *Rolt and Jervis*, contra, contended, that the dissolution could only be deemed from the present time, citing *Sayers v. Bennett*, 1 Cox, 107.

The Vice-Chancellor said, the defendant had voluntarily left the town and never returned; and if there were any foundation for his charge against the plaintiff of spreading false reports, how was it he did not prosecute the charge? The dissolution must take place from April 11, 1848, and the defendant pay the costs of this application.

Nov. 21.—*Jonas v. Brandon*—Cur. ad. vult.

—23.—*In re London, Birmingham, and Buckinghamshire Railway Company, Ex parte Lozades; Ib., Ex parte Waddy*—Petition of Mr. Waddy for winding up of this company allowed, that of Mr. Lozades refused.

—23.—*In re Fiddler, Ex parte Turpin*—Order for payment of trustees' costs out of fund paid into Court under 10 & 11 Vict. c. 96.

—23.—*In re Wright's Trust*—Order to serve trustee dissenting to payment of money into Court under 12 & 13 Vict. c. 74.

—24.—*Allen v. Wilson*—Cur. ad. vult.

—24.—*Loder v. Arnold and another*—Ex parte injunction to restrain builders from pulling down certain houses and removing the materials.

—24.—*Wright v. Barnewall*—Cur. ad. vult.

—26.—*Billage v. Southes*—Stand over.

—26.—*Allen v. Wilson*—Cur. ad. vult.

Vice-Chancellor Knight Bruce.

Ex parte Lord, in re Lord. Nov. 7, 1849.

PETITION TO ANNUL FIAT.—INTITULING.—AMENDMENT.

Leave was given to amend a mistake in the title of a petition by a bankrupt to annul the fiat, and headed in the matter of one bankrupt only, in lieu of the two partners, although the 21 days allowed under the 5 & 6 Vict. c. 122, s. 24, to the bankrupt to dispute the fiat, had expired.

THIS was a petition by a bankrupt to annul the fiat.

Bacon and T. H. Terrell, in support of the petition.

Swanston and Russell, for the respondents, contended, that the petition was defective in title, being in the matter of Lord only, whereas the fiat was a joint one of Lord and Archer; nor could leave to amend be given, as the 21 days under the 5 & 6 Vict. c. 122, s. 24, for the bankrupt to impeach the fiat, had expired.

The Vice-Chancellor said, that the Court

had jurisdiction to amend a mere slip in the title, in order to allow the petition to be heard on the merits, and that the decision of Lord Lyndhurst in *Ex parte Thorold*, 1 Phill. 239, as to the construction of the clause in the 5 & 6 Vict. c. 122, giving the 21 days, did not preclude the granting such leave to amend.

Nov. 21.—*Ex parte Bainbridge, In re Stainton*—Petition refused to annul fiat—Official assignee to be allowed sums paid to bankrupt, but not poundage.

—21.—*Ex parte Sturges, in re Kernot; Cuttin, respondent*—Fiat annulled and stay of execution as to costs due on proceedings at law, taken off.

—21.—*Ex parte Leonard, In re Carter*—Petition to annul fiat dismissed with costs.

—21.—*Ex parte Sparrow, In re Batson*—Petition dismissed with costs to be paid out of separate estate.

—21.—*Ex parte Emerson, In re Emerson*—Petition dismissed for assignee to pay alleged balance to petitioner and for further investigation.

—21.—*Ex parte Sheward, In re Sheward*—Motion to rescind order of Commissioner requiring payment of debt or security by bond, refused with costs.

—22.—*Hayward v. Dublin, Belfast, and Coleraine Railway Company*—Leave to inspect documents and take copies and extracts, without prejudice to lien, and costs reserved.

—23.—*In re Wexford, Waterford, and Valencia Railway Company, Ex parte Fisher*—Petition for dissolution and winding up refused with costs.

—23.—*In re Cambrian Grand Junction Railway Company*—Order for reference under 11 & 12 Vict. c. 45.

—23.—*In re Madrid and Valencia Railway Company*—Stand over.

—23.—*In re Parish of St. Thomas the Apostle, Watling-street*—Order on each party to bear their own costs—the ordinary costs to be paid by the City under the London Improvement Act.

—23.—*Ex parte United Patriots' Benefit and Provident Insurance Society*—Order for delivery of books and papers from the agent to the secretary of the society, and reference as to the account.

—23.—*In re Edmonds, ex parte Edmonds*—Order of Commissioner adjudging petitioner a bankrupt affirmed.

—23.—*Ex parte Hinde, in re Higginson and another*—Cur. ad. vult.

—24.—*Black v. Weekes*—Injunction refused restraining transfer of stock pending proceedings in the Ecclesiastical Court.

—26.—*In re Shrewsbury and Chester Railway Company v. Chester and Holyhead Railway Company*—Stand over.

—26.—*Tyssen v. East and West India Docks and Birmingham Railway Company*—Defendants ordered to bring into Court 14,500*l.*, and injunction refused without prejudice.

Nov. 26.—*Black v. Weekes*—Motion refused for defendant's costs, without prejudice to costs reserved.

— 26.—*Hindley v. Swinason*—Stand over with leave to bring action.

— 26.—*In re Edwards*—Motion refused to stay adjudication until special case could be settled for appeal.

— 27.—*Esparte Dodgson, in re North of England Joint-Stock Banking Company*—Motion refused without costs to limit liability of contributory by adding qualification.

— 27.—*Esparte Kirtland, in re Kirtland*—Decree of Commissioner affirmed.

Vice-Chancellor Wigram.

Nov. 21.—*Attorney-General v. Murdock*—Minutes of decree settled.

— 21.—*Marquis of Londonderry v. Ovingdon and others*—Order varied by allowing plaintiffs to take such proceedings as they might be advised.

— 22.—*Griffiths v. Ricketts*—Stand over.

— 22.—*Ballingall v. Jones*—Injunction granted *ex parte* to restrain defendant from publishing extracts of plaintiff's account-books in relation to a ship in which defendant was clerk.

— 22.—*Toulmin v. Copland*—Stand over to arrange minutes of decree by consent.

— 23.—*Morrison v. Hoppe*—*Cur. ad. vult.*

— 21, 24.—*Thompson v. Roper*—Bill dismissed for specific performance with costs against defendant's son and other children, and his assignees, but without costs against defendant.

— 23, 24, 26.—*Smith v. Capron*—Reference to Master as to title, and defendant held bound to perform contract.

— 26.—*Rigby v. Great Western Railway Company*—*Cur. ad. vult.*

Court of Queen's Bench.

Wilson v. Zutusta and others. Nov. 7, 1849.

PRINCIPAL AND AGENT.—EXECUTORY CONTRACTS.—STAMP ACT.

Semble, foreign agents in London signing an agreement on behalf of their principal residing abroad, and without contracting in any part thereof, are liable thereon, although it is not shown their principal is not liable, and although the agreement is executory and to be performed abroad.

Semble also, a memorandum for the time of a fireman or stoker on board a steam vessel for a consideration above 20l., is within the excepting schedule of the 56 Geo. 3, c. 184, and is receivable in evidence without a stamp.

THIS was a motion pursuant to leave to enter the verdict for the defendants, on the second issue, on the ground that the defendants were not personally liable, and that the agreement in question was not receivable in

evidence for want of a stamp, under 56 Geo. 3, c. 184.

This action was brought by the plaintiff, a fireman or stoker, for wages due in respect of service on board of the *Tridente*, an English steam vessel, but sailing under Spanish colours, and bound for Havannah. An agreement had been entered into between the plaintiff and the defendants, who were Spanish merchants and foreign agents in London, as agents for a Spanish merchant at Havannah, to employ the plaintiff for a year, and if he was discharged before that time, he was to have three months' wages and a passage home. The trial took place before Baron Alderson, at the last Sussex Assizes for Lewes, and a verdict passed for the plaintiff, with 25l. damages.

Channell, S. L., in support of the motion, cited *Dowman v. Williams*, 7 Q. B. 163.

The Court granted the rule.*

Nov. 21.—*Sales v. Blain*—Rule refused to set aside non-suit or enter verdict for plaintiff.

— 21.—*Regina v. Inhabitants of St. Issey*—Rule refused.

— 21.—*Wilson v. Eden*—*Cur. ad. vult.*

— 21.—*Regina v. London, Brighton, and South Coast Railway Company*—Stand over.

— 22.—*Regina v. Walker*—Rule nisi for new trial.

— 22.—*In re Humphreys*—Rule absolute for attachment on attorney for contempt in acting in a cause without due qualification, to lie however in the office till fifth day of Hilary Term the attorney to pay costs of application, and cause himself to be admitted.

— 23.—*Brough v. Eisenberg*—*Cur. ad. vult.*

— 23.—*Regina v. Muggerside and others*—Judgment on prisoners convicted under the Smuggling Act.

— 23.—*Regina v. Cutts*—Rule nisi for new trial on the ground of misdirection and upon affidavits.

— 24.—*Esparte Bailey, in re South Devon Railway Company*—Rule refused for company to take up award, no affidavit of its having been made being produced.

— 24.—*Regina v. Ingham and others*—Rule discharged for mandamus to magistrates to hear information for wilful and corrupt perjury.

— 24.—*Regina v. Justices of Bath*—Rule discharged without costs for mandamus to issue distress warrant for penalties.

— 26.—*Braham v. Joyce*—Application refused to discharge defendant committed by judge of the Palace Court.

— 26.—*Regina v. Justices of Kingston-upon-Hull*—Rule absolute for mandamus to issue warrants of distress for penalties under Nuisances' Removal Act.

— 26.—*Esparte Nash, in re Waterford-Wicklow, Wexford, and Dublin Railway Com-*

* On November 24, however, the rule was discharged, on the ground that the agents were liable, and that the memorandum did not require a stamp.

pay—Rule nisi for mandamus to produce account-books, register of shareholders, ledger and balance-sheet.

Nov. 26.—*Heady v. Lancaster*—Rule discharged to set aside affidavits.

Queen's Bench Practice Court.

(Coram Mr. Justice Patteson.)

Regina v. Justices of Sussex. Nov. 5. 1849.

CERTIFICATE IN BANKRUPTCY. — POOR RATES.

Quære, whether a certificate of bankruptcy is a bar to a distress for poor rates?

A POOR rate had been duly made and published in November, 1848, for the parish of Burwash, in Sussex; but on 23rd December, one F. Douglas Haviland, a rate-payer, became a bankrupt, and obtained his certificate on 9th March, 1849. The bankrupt had continued to occupy the premises during the whole period. The justices having refused to issue a distress warrant, as there was a doubt whether a certificate in bankruptcy could operate as a bar,

Phism now moved for a rule nisi for a mandamus on them, to issue a distress warrant for 50*l.* 12*s.* 6*d.*, the amount of poor-rate due from the bankrupt.

The Court granted the rule.

Nov. 21.—*Markwell v. Dyson*—Stand over.

— 21.—*Regina v. Cooksey, Mayor, &c. of Bath*—Rule nisi for certiorari to remove indictment at Quarter Sessions, for obstructing the public highway at Bath.

— 21.—*James v. Lynn*—Rule nisi for costs of issue, under Tithe Commutation Act.

— 21.—*Axon*.—Rule nisi on attorney to deliver up deeds and papers.

— 21.—*Axon*.—Rule nisi on attorney to pay over sum of money with interest thereon.

— 21.—*Jennings v. Lynn*—Rule nisi to set aside writ of summons and all subsequent proceedings.

— 22.—*Fairhurst v. York, Newcastle, and Berwick Railway Company*—Rule nisi on directors to produce arbitrator's award in order to be made a rule of Court.

— 22.—*Axon*.—Rule nisi on attorney to answer matters of affidavit.

— 23.—*In re East and West Yorkshire Junction and Leeds and Thirsk Railway Company, Ex parte Wilson and another*—Rule nisi to set aside award.

— 23.—*Newton v. Brighton Railway Company*—Rule refused to set aside attachment for non-payment of costs in pursuance to the Master's allocatur.

— 24.—*Regina v. Dean and Chapter of Rochester*—Rule nisi for mandamus to restore the head master of the free grammar school.

— 24.—*Regina v. Wilmer and another*—Rule nisi to file criminal information against defendants for libel.

— 26.—*Harrison v. Newton*—Rule nisi to be made a rule of Court to set aside discharge of defendant out of custody.

Nov. 26.—*Regina v. Coroner of Leeds*—Inquisition quashed on certiorari.

Common Pleas.

Doe d. Church v. Pontifex and another. Nov. 2, 1849.

ANNUITY DEED. — MEMORIAL. — CHEQUE PAYABLE ON DEMAND.

Quære, whether the memorial of an annuity deed need set out when a cheque, which was part of the consideration, became payable?

MR. CHURCH having applied to the defendants, Messrs. Pontifex, for an advance of money, in order to enable him to erect a brewery, it was on the 19th February, 1838, agreed that the defendants should provide all the materials necessary to fit up the brewery, and also advance some money, to be secured on leasehold property, and the plaintiff was to grant an annuity to the defendants at the rate of 11 per cent. interest, dependent on certain lives. An annuity deed was accordingly executed in April, 1839, and the memorial registered under 55 Geo. 3, c. 141, set forth the various sums the defendants had advanced in consideration thereof, and *inter alia*, a sum of 250*l.* paid by cheque on the defendants' bankers, and dated when drawn. The plaintiff having failed to keep up the payments, the defendants, under their power in the annuity deed, entered on the leasehold lands, and plaintiff thereupon brought his action of ejectment. The defendants put in the deed, but it was rejected on the ground that the memorial did not state when the cheque became payable. A verdict was found for the plaintiff at the sittings after last Trinity Term for Middlesex, before *Wilde, L. C. J.*, leave being reserved to move for a new trial.

Byles, S. L., now moved accordingly, and contended, that a cheque in law meant an order for money payable on demand, and not at any particular time, and that it was unnecessary, therefore, to set out the time: citing, *Ex parte Mitchell*, 2 East, 137; *Hall v. Lock*, 1 Eech. R. 300.

The Court granted a rule nisi for a new trial.

Nov. 21.—*Fitzgerald v. Fitzgerald*—Rule discharged to enter verdict for plaintiff on 1st issue.

— 21.—*Lewis v. Campbell*—Rule discharged to enter monuit or reduce damages on leave reserved.

— 21.—*In re Baxter*—Rule refused for attachment for non-delivery of attorney's bill of costs, pursuant to judge's order.

— 21.—*Cole v. Knight*—Rule nisi for prohibition to judge of Warwick County Court.

— 21.—*Slater v. Mackie*—Rule nisi for plaintiff's costs in an action under 43 Geo. 3, c. 46, s. 4.

— 21.—*Porcher and others v. Gardner and others*.—Judgment for the defendants on demurrer.

— 21.—*Smith v. Fritchard and others*—Rule

absolute to enter verdict for 70*l.* as against defendant Pritchard on the 2nd count.

Nvv. 22.—*Acraman and others, assignees, v. Morris*—Rule discharged to enter verdict for defendant on leave reserved.

— 23.—*Doe d. Rogers v. Price*—Cur. ad. vult.

— 24.—*Duke of Brunswick v. Sloman and others*—Rule discharged with costs to discharge defendant Miles out of custody.

— 24.—*Hicks v. Gregory, executor*—Rule discharged to set aside verdict and enter it for defendant.

— 24.—*Chinn, pauper, v. Buller*—Rule absolute to enter a suggestion to deprive plaintiff of costs.

— 26.—*Stead v. Anderson*—Rule nisi on defendant, to discharge plaintiff from class 1, of the Queen's Bench Prison, set apart for fraudulent creditors, and to restore him to the former class.

— 26.—*Stead v. Anderson*—Rule refused to discharge plaintiff from prison altogether.

— 26.—*Camp v. Pope*—Rule absolute to discharge defendant out of custody.

Eschequer.

Grieve, administratrix, v. Milton. Nov. 3, 1849.

DEATH BY ACCIDENTS' COMPENSATION.— LIABILITY OF COUNTY BRIDGES' SURVEYOR.

A rule nisi was granted to enter verdict for the plaintiff, upon leave reserved in an action under the 9 & 10 Vict. c. 93, by the widow and administratrix of a person killed by the alleged negligence of the defendant, the county bridges' surveyor, in allowing a heap of stones to remain on a bridge, whereby the death had been caused, on the question whether there was evidence to go to the jury upon the issue as to the defendant's liability and traverse of notice.

THIS action was brought under the 9 & 10 Vict. c. 93, (the Act for Compensating Deaths by Accidents,) by the widow and administratrix of the deceased, who was in attendance as a witness at the Carlisle Assizes in August, 1848, and had gone to Wigton by rail, and then hired a horse and gig to go some distance further. On passing Wiza Bridge, on their return, the night being dark, the gig came in contact with a heap of stones, which it appeared had been left there by one Johnston, alleged to be the defendant's workman, and was overturned. The deceased died eight days afterwards, in consequence of the injuries he had received. The declaration charged the defendant, who was bridge surveyor of the county, with having improperly and negligently placed the heap of stones on the road, and with having omitted after due notice to remove it. The defendant pleaded the general issue and a traverse of the notice. The action was tried at the last Cumberland Assizes at Carlisle, before Mr. Justice Wightman, who directed a nonsuit, with leave however to enter a verdict for

the plaintiff for 300*l.*, if the Court should be of opinion there was a sufficient evidence to go to the jury.

Temple moved accordingly, and contended, that from a letter of the defendant's to the magistrates, the acts of Johnston were recognized, and as such would be evidence as to his liability, and that it was the defendant's duty to see there was no obstacle on any of the bridges or to remove it within a reasonable time, and that he could not set up his own negligence as an excuse, and besides, there was some evidence of notice.

The Court granted a rule nisi.

Nov. 21.—*Duke of Beaufort v. Smith*—On special case, judgment for the plaintiff.

— 21.—*Hoblay v. Pickering*—Rule nisi to set aside award on the ground of insufficient notice to one of parties to attend.

— 21, 22.—*Morrison and others v. Glover*—On demurrer, judgment for the plaintiffs.

— 22.—*Hawkins v. Harewood*—Rule for new trial discharged, on the ground of misdirection, but made absolute to reduce verdict from 150*l.* to 13*l.*

— 22.—*Nash v. Wearing and others, Wearing and others v. Nash*—Rule nisi set aside arbitrator's award.

— 23.—*Regina v. Joplin*—Rule absolute on sheriff of Northumberland for writ of *melius inquirendum* as to defendant's estate and effects in that county.

— 23.—*Attorney-General v. Shillibeer*—Rule nisi on the Crown to review the taxation of the Queen's Remembrancer, under the 3 & 4 Wm. 4, c. 101,

— 23.—*Woolfe v. Cobbold and another*—Rule discharged for new trial.

— 24.—*Horton v. Earl of Devon and others*—Interpleader rule discharged with costs.

— 24.—*Pudney v. Eastern Counties Railway Company and Simpson*—Rule nisi for new trial on behalf of defendant Simpson, on the ground that verdict was against evidence.

— 24.—*Curlewis v. Ramsden*—Rule refused to enter nonsuit on leave reserved.

— 24.—*Fiskwick v. Billings*—Rule nisi to set aside verdict, and new trial had, on the ground of misdirection and improper rejection of evidence.

— 26.—*In re Willis*—Certificate to Vice-Chancellor Knight Bruce for proof to be allowed of guarantee.

— 26.—*Pratt v. Hardisty*—Rule discharged for new trial.

— 26.—*Martia v. Mottram*—Rule discharged to stay proceedings.

Court of Eschequer Chamber.

Nov. 27.—*Vigers v. Dean and Chapter of St. Paul's*—Judgment of the Court of Queen's Bench reversed.

— 27.—*Gosling v. Veley*—Judgment to be delivered in Hilary Term.

— 27.—*Royal Exchange Insurance Company v. M Swiney*—Cur. ad. vult.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

JURISDICTION OF COUNTY COURTS.

[We commence the series in the present Volume of the Analytical Digest of Cases, selected from the "Regular" Reports, with the Decisions of the Superior Courts on questions relating to the County Courts, which it will be useful thus to state at one view.]

ATTORNEY.

Costs.—The privilege of an attorney to sue in the Superior Court of which he is an attorney, is not affected by the County Courts' Act, 9 & 10 Vict. c. 95.

He is, therefore, entitled to costs, notwithstanding section 129, although he recovers less than 20*l.* in an action in the Superior Court. *Jones v. Brown*, 5 D. & L. 716.

ATTORNEY'S PRIVILEGE.

1. *As plaintiff.*—The County Courts' Act, 9 & 10 Vict. c. 95, does not take away the privilege of an attorney plaintiff, and subject him to the risk of costs, if he sue in a Superior Court, for a cause of action for which he might have sued in the County Court. *Lewis v. Hance*, 5 D. & L. 641; *Jones v. Savage*, 5 D. & L. 645, n.

Cases cited in the judgment: *Dyer v. Levy*, 4 Dowl. 630; *Board v. Parker*, 7 East, 47; *Hussey v. Jordan*, 25 G. 3, cited in *Wiltshire v. Lloyd*, 1 Dougl. 381, n.; *Johnson v. Bray*, 2 B. & B. 698; 5 Moore, 622.

2. *As defendant.*—The privilege of an attorney defendant to be sued in the Superior Court of which he is an attorney, is taken away by the London County Court Act, (10 & 11 Vict. c. lxxi., s. 49.) *Jeffreys v. Beart*, 2 D. & L. 646.

COSTS.

1. *Suggestion.*—On a motion to enter a suggestion under the 9 & 10 Vict. c. 95, to deprive the plaintiff of costs in an action, it is not necessary that the affidavits in support of the motion should show that the judge, before whom the cause was tried, did not certify, that it was a fit action to be brought in the Superior Court. *Nind v. Rhodes*, 5 D. & L. 621.

2. *Suggestion.*—*Trial before sheriff.*—The plaintiff, in an action for assumpsit against the defendant, an attorney, recovered a verdict before the sheriff, on a writ of trial, for less than 20*l.* Held, on the motion to enter a suggestion to deprive the plaintiff of costs under the London County Court Act, that the 113th sect., depriving the plaintiff of costs in such cases, applied; although the sheriff had no power to certify: the proper course for the plaintiff to have adopted being, to have inserted in the order for the writ of trial that the sheriff should have power to certify. *Jeffreys v. Beart*, 5 D. & L. 646.

3. *Affidavit to enter suggestion.*—In order to entitle a defendant to deprive a plaintiff of his costs under the 9 & 10 Vict. c. 95, s. 129, it is requisite that the affidavit in support of the application should negative that the cause comes

within any of the exceptions contained in section 128. *Meetan v. Nicholls*, 5 D. & L. 799.

See *Attorney v. Jurisdiction*, 1.

JURISDICTION.

1. *Bill of Exchange.*—*Costs.*—An action on a bill of exchange to recover less than 20*l.* is within the 129th section of the 9 & 10 Vict. c. 95, and not within the 128th section; and therefore, a plaintiff, bringing it in a Superior Court, is not entitled to costs. *Nind v. Rhodes*, 5 D. & L. 621.

2. *Altering judgment.*—*Semble*, that a judge of a County Court may alter his judgment, after it has been pronounced and recorded in the book of the Court, kept for that purpose; if he do so at the same Court, and in the presence of the parties. *Jones v. Jones*, 5 D. & L. 628.

3. *Assent.*—A total want of jurisdiction in the County Court cannot be cured by the assent of the parties. *Jones v. Owen*, 5 D. & L. 669.

4. *Building Society.*—On rule for a mandamus to the judge of a County Court to hear a plaintiff brought by a member of a building society within the 6 and 7 Wm. 4, c. 32, against an officer of that society, the 25th rule of the society directing a reference of all disputes to two justices of the peace, pursuant to the stat. 10 Geo. 4, c. 56, s. 27, which is incorporated in the first statute: Held, that the right to bring an action was taken away; and that the 9 & 10 Vict. c. 95, s. 58, did not operate to revive a power of bringing actions in the County Courts, which had been taken away from all the Courts generally. *Ex parte Payne*, 5 D. & L. 679.

Cases cited in the judgment: *Crisp v. Bunbury*, 8 Bing. 394; 1 M. & Scott, 646; *Timms v. Williams*, 3 Q. B. 413.

5. *Residence of defendant.*—On an application to deprive a plaintiff of his costs under the 9 & 10 Vict. c. 95, s. 129, it is necessary that the affidavit on the part of the defendant should show not merely that the cause of action arose within the jurisdiction of the County Court, but that the defendant was resident within the jurisdiction at the time when the action was brought. *Matthew v. Broughall*, 5 D. & L. 791.

See *Possession of Premises*, 1, 3; *Prohibition*, 5; *Title to Land*, 2.

LANDLORD AND TENANT.

Mortgage.—The 122nd section of the County Courts' Act, (9 & 10 Vict. c. 95), contemplates those cases only, in which the ordinary relation of landlord and tenant exists. Therefore, where the party suing under that section claimed as mortgagee of the premises, and there was no sufficient evidence that the defendant, who was tenant of the mortgagor, had consented to hold under the mortgage, or was even aware of the existence of a mortgage; the Court of Queen's Bench granted a prohibition to the County Court, after judgment given and possession delivered. *Jones v. Owen*, 5 D. & L. 669.

NEW TRIAL.

Jurisdiction.—After a decision in the plaintiff's favour in the County Court, before the judge alone, an application for a new trial to be had before a jury, was made by the defendant. The plaintiff opposed the application, and objected that, under the 20th rule as framed by the judges, under the 78th section of the County Courts' Act, the judges had no power to order a new trial by jury, when the first trial had been decided by the judge alone. The judge, however, made an order for a new trial by jury, on payment of costs; and a new trial was accordingly had, and a verdict returned for the defendant: *Held*, that the plaintiff, by accepting the costs under the judge's order, had waived his right to object to the second trial.

Quere, if the judge of the County Court, under these circumstances, had any power to make such an order? *Sparrow v. Reed*, 5 D. & L. 633.

See *Prohibition*, 6.

POSSESSION OF PREMISES.

1. **Jurisdiction.**—On a motion for a prohibition to the judge of a County Court: *Held*, that in a proceeding under the 122nd section of the 9 & 10 Vict. c. 95, the jurisdiction of the County Court is not ousted by the tenant appearing and showing cause.

Held also, that the judge of the County Court has jurisdiction to inquire whether the tenancy was determined by a legal notice to quit, and that his decision on that fact is conclusive, and cannot be questioned on a motion for a prohibition. *Fearon v. Norwell*, 5 D. & L. 459.

Case cited in the judgment: *Regina v. Bolton*, 1 Q. B. 66.

2. **Prohibition.**—On the 21st July, 1847, the judge of a County Court, in a plaintiff under the 122nd section of the County Courts' Act, (9 & 10 Vict. c. 95,) gave judgment that the defendant should deliver up possession of the premises on the 24th of December following. No warrant of possession was drawn up or executed on the 31st of May, 1848, a fresh plaintiff was brought to recover possession of the premises between the same parties, on the same notice to quit; and judgment given in the plaintiff's favour: *Held*, on a motion for a prohibition, that as the rules and forms framed by the judges under the 78th section of the act contain a form of a judgment, (No. 30,) which orders possession to be delivered "forthwith," the judge had no authority to pronounce a different judgment; that the first judgment was therefore a nullity, and that the plaintiffs might treat it as such, and institute the second plaintiff, and that they were bound to apply to a judge of the County Court to amend his former judgment.

It is sufficient to bring a case within the 122nd section, that the yearly rent is under the value of 50*l.*, and that no fine has been paid, even if the actual value of the premises be beyond that sum. *Fearon v. Norwell*, 5 D. & L. 445.

3. **Jurisdiction.**—The judge of a County Court has no jurisdiction under the 122nd section of the County Courts' Act, to issue a warrant to the bailiff of the Court, to give possession of premises not situated within his district; and a writ of prohibition will lie.

Quere, if the mere issuing the summons in such a case is a ground for prohibition? *Ellis v. Peachey*, 5 D. & L. 675.

See *Landlord and Tenant*.

PRIVILEGE OF ATTORNEY.

See *Attorney*.

PROHIBITION.

1. **Summons.**—An application for a plaintiff was correctly made, and the plaintiff itself was correctly entered in the County Court against the defendant, as executor of "F. W. Taylor," but the summons described him as executor of "W. Thompson." At the hearing, the judge of the County Court, upon its being represented to him that the Statute of Limitations would intervene to bar the plaintiff's claim, directed a fresh summons to issue, bearing the same date and number as the first: *Held*, on motion to the Court of Queen's Bench for a prohibition, that this Court would not interfere with the course taken by the judge of the County Court. *Foster v. Temple*, 5 D. & L. 655.

2. **Fresh plaintiff.**—Plaint in the County Court for 20*l.* for rent. Defendant appeared and pleaded pendency of another action in the Court of Exchequer upon a promissory note, the consideration for giving which was the rent: *Held*, that as they were not for the same cause of action, *eo nomine*, the jurisdiction of the County Court was not ousted.

The judge gave judgment for the plaintiff on the 15th of February, 1848, ordering payment to be made within a week of the decision of the cause in the Superior Court. The plaintiff afterwards came before him, in the absence of the defendant, and showed that the action in the Superior Court had been discontinued; whereupon the judge granted a summons under the 98th section, calling upon the defendant to show cause why he should not pay the amount; "the particulars of debt or claim" being "judgment of this Court, 15th of February, 1848, for 20*l.* debt, and 2*l.* 10*s.* 8*d.* costs. The defendant appeared, and the judge rescinded his former order, and made an order for payment by instalments. The defendant was served with a copy of the judgment, drawn up upon this order, in the Form No. 24, in the Schedule of Forms framed by the judges; in which it was ordered, that "the said plaintiff do recover against the said defendant the sum of 22*l.* 7*s.* 4*d.* for debt," "and 1*l.* 10*s.* 2*d.* for costs." *Held*, on motion for a prohibition, that the latter summons was not in the nature of a fresh plaintiff; that the judge had jurisdiction to make this latter order, although for more than 20*l.*; and that the insertion of the word "debt" in the judgment as drawn up, did not show an excess of jurisdiction. *Byrne v. Knappe*, 5 D. & L. 659.

2. *Service of rule nisi*.—The judgment of County Court was delivered on the 27th of May. On the 1st June, affidavits in support of a rule nisi for a prohibition were sworn, and the rule obtained on the 6th. *Held*, that the defendant came within a reasonable time, although the rule was not served on the bailiff till the 7th, and he had previously delivered possession to the plaintiff on the 6th. *Jones v. Owen*, 5 D. & L. 669.

4. *Judgment recovered*.—On a summons before the judge of a County Court, the defendant pleaded judgment recovered and execution issued for the same claim. The plaintiff admitted the truth of the plea; but, notwithstanding the judge decided in favour of the plaintiff, a prohibition to the County Court was refused, as the decision of the judge was a matter within his jurisdiction. *Espartero Rayner*, 5 D. & L. 342.

5. *Jurisdiction*.—*Statute of Limitations*.—In a plaint in the County Court, the defendants pleaded the statute of limitations, but without giving the notice required by the 19th rule, framed by the judges, under the 9 & 10 Vict. c. 95, s. 78. The plaintiff required an adjournment of the case, in order to answer the plea; which was granted, and the case adjourned to a subsequent day. On that day, the case came on for hearing, and the defendants obtained a judgment in their favour, which was entered by the clerk of the County Court in the book kept for that purpose. The defendants then left the Court. Some days afterwards they received notice that the judge had rescinded his judgment, and that the case was adjourned for further hearing. They attended on the day named, and protested against any further hearing of the case. The judge, however, overruled the objection, and gave judgment for the plaintiff, on the ground that the plea of the Statute of Limitations, on the former occasion, had been improperly pleaded. On motion for a prohibition, *Held*, that the judge had no authority to rescind his former decision in the absence of the defendants; that he had acted without jurisdiction, and that a prohibition must go. *Jones v. Jones*, 5 D. & L. 628.

6. *New Trial*.—On the 23rd of December, 1846, a plaint was heard and determined in a County Court, in the absence of the defendant, it being proved to the satisfaction of the judge of the Court that the original summons had been duly served on the defendant as required by the 11th rule, made by the judges of the Superior Courts, under the 78th section of the County Courts' Act. On the 13th of January, 1847, the defendant moved for a new trial, on the ground that the requisitions of the 11th rule as to service had not been complied with. Witnesses were heard on both sides, and the judge decided that he was satisfied that the rule had not been complied with, but that he was of opinion, under the circumstances, that the objection had been waived; but offered to grant a new trial on an affidavit of merits: *Held*, no ground for writ of pre-

hibition to issue. *Zohrab v. Smith*, 5 D. & L. 635.

See *Possession of Premises*, 2; *Title to Land*, 1.

SERVICE OF SUMMONS.

1. *Semble*, that a compliance with the terms of the 11th Rule, which requires that it shall be proved to the satisfaction of the judge, that the service of the summons had come to the knowledge of the defendant 10 clear days before the return day of the summons, is not a condition precedent necessary to give jurisdiction. *Zohrab v. Smith*, 5 D. & L. 635.

2. An action having been brought against the defendant in the County Court, he received no notice of the proceedings, the summons having been served by a mistake at a wrong place. Judgment was given against him in his absence, proof having been given of the service of the summons to the judge's satisfaction. The defendant made an application to the County Court under the 9 & 10 Vict. c. 95, s. 80, to set aside the judgment and execution. The judge made an order, but upon terms to which the defendant would not consent. The defendant then paid the amount under protest, and applied to this Court for a prohibition: *Held*, that the judge having heard the evidence of service and decided upon it, had jurisdiction in the matter; and that, therefore, no prohibition could be granted. *Robinson v. Lenaghan*, 5 D. & L. 713.

SPLITTING CAUSES OF ACTION.

1. Where the alleged cause of action arose upon certain tickets which had been given by certain persons, alleged by the plaintiff to be the agents of the defendant, to certain workmen, who, upon presenting them to the plaintiff, had been supplied by him with goods; and the plaintiff had then brought 228 plaints against the defendant in respect of such supply, in the County Court, for sums amounting in all to 303l. 19s., the Court of Exchequer granted a prohibition; although only one sum amounted to more than 5s., and most of them were under 20s.

Quere, whether the Court would have granted the prohibition if the several plaints had not in all exceeded the amount of 20s. *Grimby v. Aykroyd*, 5 D. & L. 701.

2. The 63rd section of the 9 & 10 Vict. c. 95, provides, "that it shall not be lawful for a plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts:" *Held*, that the term "cause of action" was not limited to one separate cause of action, but that it meant *cause of one action*, which might include separate contracts, and that it applied to a tradesman's bill, in which each item is connected with the former one, inasmuch as the dealing is intended to be continuous; and each item when incurred is, if not paid, united with the former ones, and forms one entire demand with them. *Quere*, however, whether the 63rd section applies to all debts which can be recovered in one

count, under whatever circumstances incurred? *Grimbly v. Aykroyd*, 5 D. & L. 701.

Cases cited in the judgment: *Anon*, Vent. 65; *Girling v. Alders*, Vent. 73; 3 Keble, 617; *Rex v. Sheriff of Herefordshire*, 1 B. & Ad. 672; *Hesketh v. Fawcett*, 11 M. & W. 356; *Neale v. Ellis*, 1 D. & L. 163.

SUGGESTION TO AVOID COSTS.

See *Costs*.

SUPERIOR COURT, ACTION IN.

1. The 129th section of the 9 & 10 Vict. c. 95, which deprives of costs parties who, after the passing of that act, sue in the Superior Courts for causes for which a plaint might have been entered in the County Court, does not apply to an action commenced in a Superior Court after the passing of that act, but before the County Court was established by Order in Council. *Harries v. Lawrence*, 1 Exch. R. 697.

2. The 129th section of the 9 & 10 Vict. c. 95, which deprives of costs parties who sue in the Superior Courts for causes for which plaints might have been entered in the County Courts, does not apply to an action commenced in the Superior Court after the publication of an order in council establishing the County Court, but before the appointment of either judge or clerk. *Parker v. Crouch*, 1 Exch. R. 699.

TITLE TO FISHERY.

A claim to a right of fishing by the inhabitants of a town is not a question of title to an incorporeal hereditament within the proviso of the 9 & 10 Vict. c. 95, s. 58; and, therefore, the Court refused a prohibition to a County Court forbidding execution to issue on a judgment of that Court in such a case. *Lloyd, in re*, 5 D. & L. 784.

Case cited in the judgment: *Gateward's case*, 6 Rep. 59, a.

TITLE TO HEREDITAMENTS.

By a local act of parliament for re-building a certain church, trustees were appointed to levy rates upon all houses in the parish, one-half to be paid by the landlord, and the other half by the tenant; the tenants to pay the whole in the first instance, and to deduct a

moiety out of the rent; and that every landlord should allow of such deduction accordingly, notwithstanding any agreement to the contrary. After the passing of this act, a lease was granted in the parish to a tenant, who covenanted to pay all parliamentary and other taxes and rates. The tenant paid the full rent and the rate, but the landlord refused to deduct a moiety of it from the plaintiff, on the ground that the act only applied to agreements in existence at the time it was passed. The tenant having sued the landlord in a County Court for a moiety of the amount so paid for rates: *Held*, that as no question was raised as to "the title to any corporeal or incorporeal hereditaments," within the 58th section of the stat. 9 & 10 Vict. c. 95, there was no ground for a writ of prohibition.

Semble, per *Parke, B.*, that the act applied only to agreements entered into it before it came into operation. *In re Knight*, 1 Exch. R. 802.

TITLE TO LAND.

1. *Prohibition*.—In any case, if the judge is wrong, and assumes jurisdiction where the title to land, &c., really is in question, the defendant, upon making that appear to the Superior Court, would be entitled to a prohibition. *Lilley v. Harvey*, 5 D. & L. 648.

2. *Jurisdiction*.—Under the 9 & 10 Vict. c. 95, s. 58, the judge of a County Court, upon objection made that "the title to land," &c., is in question, has authority to ascertain whether it really is so or not.

Where, upon a plaint for use and occupation in the County Court, the defendant objected, under the 58th section of the County Courts' Act, 9 & 10 Vict. c. 95, that the title to land, &c., came in question: *Held*, that the jurisdiction of the County Court was not ousted by the mere oath of the defendant, but that the judge was bound to inquire into so much of the case as was necessary to satisfy him that title was really in question. It is otherwise where title is raised on the pleadings. *Lilley v. Horvey*, 5 D. & L. 648; *Owen v. Pearse*, 5 D. & L. 654, a.

Cases cited in the judgment: *Rex v. Chapelwardens of Milnrow*, 5 M. & S. 248; *Rex v. Wrottesley*, 1 B. & Ad. 648.

BUSINESS OF THE COURTS.

• NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER TRINITY TERM, 1849.

Common Pleas.

London.

J. J. Blake
Oliverston and Co.
Marten and Co.
G. Rutherford
Miller
Oliverston and Co.
Druce and Sons

Soady (Commission) S. J. Mangles
Christie, jun. S. J. Trott and others
Callander S. J. Gibson and another
Grisell & anr. (inj.) S. J. James
Roach and another S. J. Grylls and others
Arbuthnot & anr. S. J. Sharp
Dickson (remnt.) S. J. Zisania and another

Prom. Young
Ca. Hughes, K. and M.
Prom. R. Ellis
Prom. Hook
Prom. J. & J. H. Linklater
Detue. Gregory, F., & Co.
Prom. Oliverston and Co.

Baker and Co.	Berry (remnt.)	S. J. Simpson and others	Simpson
Fisch and Shepherd	Williams	S. J. Maitland	Ca. G. Smith
Lander	Lawson and anr.	(remt. Dumlín	Buchanan
Phillips and V.	Boyd (remnt.)	S. J. Thornton	Prom. R. Ellis
S. Walters	Edwards & ors.	(remnt.) Parker	Ca. H. Walker
Gordon and Son	Hillocoat	S. J. Archbishops of Canterbury and York	Ca. Johnson, Son, and W. Hamrott and Son
H. Lloyd	Burton and others	S. J. Penn	Prom. Bickley
Hook	Griffin and another	S. J. Baldwin	Ca. Bevor & Co.
J. & J. H. Linklater	Whitfield and another, assignees	S. J. Aland	Prom. Oliverson and Co.
Maltby and Co.	Robinson and others	S. J. Rosetto and others	Prom. Amory, Nelson and Co.
Vandercom and Co.	Lyssagt	S. J. Bryant	Prom. Same [Co.
Same	Lyssagt and another	S. J. Same	Ca. Maples and Co.
H. Clarke	Edwards and another	S. J. Great Western Rail. Co.	Prom. Morgan
Wilde, R., and Co.	Follett and others	S. J. Delaney	Prom. G. Vincent
A. Warrant	Snow	S. J. Snow	Prom. Hutchinson
Amory and Co.	Cooper	S. J. Laurie	Prom. J. Wells
H. Lloyd	Barnett and another, assignees, &c.	S. J. Reading	Prom. Gregson and K. H. Thomas
Richards and Co.	Webster	S. J. Webster	Sole and Turner
Phillips and Son	Thomas and another	S. J. Thomas	Prom. Tilson and Co.
W. M. Wilkinson	Dakin, admix. &c.	S. J. Brown and anr.	Prom. Van Sandau & Co.
J. W. J. Dawson	Ellis (remnt.)	S. J. Moore	Prom. J. C. & H. Freshfield
Phillips and Son	Thomas and another	S. J. Allan	Prom. Hughes, K. & M.
Cotterill	Hughesdon (remnt.)	S. J. Jardine	Prom. Barton
Vandercom and Co.	Price, jun. and ors.	S. J. Marshall	Prom. Few and Co.
S. Yates	Hawll	Benett	Prom. Tilson and Co.
Bristow and T.	Joyce	S. J. Smith	Prom. Same
Jeakyn	Cocks	S. J. Moore	Prom. Same
Same	Cocks, jun.	S. J. Moore	Prom. Same
Same	The Count De Morel	S. J. Shadbolt	Prom. Same
Same	Godley	S. J. Moore	Prom. Same
Same	Cartwright	S. J. Shadbolt	Prom. Same
Same	Young	S. J. Same	Prom. Same
J. & J. H. Linklater	Fussell, P. O.	Woodward	Prom. Howell
Oliverson and Co.	Bold and another.	S. J. Claxton	Prom. Gregory and Co.
J. May	Wilson	S. J. Preston	las. Frost
J. B. Tewae	Fishmongers' Co.	S. J. Dimsdale and others	Prom. { C. H. Stedman T. J. Jerwood S. W. Drake
Cotterill	Spartali	S. J. Papayanni and another	Prom. Chester, T. and Co.
Stafford	Salmon	S. J. Merryweather	Prom. Thomas Taylor
Lander	Harvey and anr.	S. J. Johnson and anr.	Ca. Saward
R. Ellis	Langton	Watson	Prom. Pringle and Co.
Asbust and Son	White and ors.	(remnt.) Shaw	Prom. Baynes
J. Jeakyn	Frere (remnt.)	Moore	Prom. Filson and Co.
Same	Allen (remnt.)	S. J. Same	Prom. Same
F. Sherwood	Imray	Rigby	Frampton
Fyson and Co.	Dearie & ors., asses.	S. J. Henderson and anr.	Ca. Murray
J. & J. H. Linklater	Edwards and others, assignees	S. J. Mason	Prom. Raven and Co.
Cotterill	Spartali and ors.	S. J. Benecke and ors.	Prom. Oliverson and Co.
Marten and Co.	Busch and anr.	S. J. Hooper	Prom. A. Jones
G. Fry	Pleschner (remnt.)	Wild	Dt. Dyte
Walters and Son	Dawson and another, executors, &c.	(remnt.) Smith	Dt. In Person
R. and W. G. Roy	Lyne and anr.	S. J. Melhuish and anr.	Prom. J. E. Fox
Druce and Sons	Thompson and anr.	S. J. Elliot	Dt. à Beckett and S.
Amory and Co.	Taylor, P. O.	S. J. Kempe	Prom. Hill and H.
A. Goddard	Walters	S. J. Spicer	Dt. Lethbridge and M.
Waters and Son	Rowse (remnt.)	Vian	Prom. Mardon and F.
M. Lewis	Hassell and wife	S. J. Hammond	Ca. Cutler
Armstrong and W.	Westbrook	Harper	Prom. E. Clarke
Empeon	Hatch	Murphy	Prom. H. Grainger
Wilson and H.	The Elec. Tel. Comp.	Brett and anr.	Ca. Sidney Smith
Same	Same	Same	Ca. Same
Same	Same	Same	Ca. Same
Lofty, P. and S.	Methringham	Wingrave	Prom. Hayes
Asbust and S.	Morrison	Chadwick	Prom. Sturmy and S.
Same	Collingham	Hunt	Ca. A. Duncan
Same	Garth, clk.	S. J. White, clk.	Prom. R. C. Barton
Same	Sleep	Booth	Dt. Watson and S.
Shard	Allen	Marshall	Prom. In Person
W. H. Vallance	Doogood	Rose	Prom. Symonds

Ablett
Same
Shearman and S.
F. West
Sadgrove
Sutton and Co.
Tyler and S.

Graham
Hawkes
Salter
Merrall
Sadgrove
Frasman and ass.
Markwich

Roin
Dobbin
Webb
S. J. Killarney & Valencia Rail.
Bower
Gibbins
Birley and ons.

Ch. Taylor
From. Nicholls
From. R. W. Webb
From. Elmalie
From. E. Moss
Dt. T. D. Taylor
Dt. & Dtrue. Fox

Essequet.

London.

Ashurst and Son
Oliveron and Co.
W. Justice

Pare
Sampson
Hewitt

S. J. J. H. Atwood
S. J. Young and others
S. J. Russell and others

Pro. Rixon and Son
Pro. Messrs. Druse
Pro. T. Matthews and T.
Lott
Dt. and Detinn, New-
burn

M'Leod and S.

Wakley and others, assign-
ees, &c. S. J. Crow, P. O., &c.

T. Tyrrell

Londonderry & Coleman
Railway Co.

Rhodes and E.
R. Hodgson
Taylor and S.
Maples and Co.

Lafone and another S. J. Bloram
Lawson and others S. J. Ellis
Taylor S. J. Star Fire Insurance Co.
S. J. Bullen

Dt. Boucher
Pro. Walton
Pro. Rees
Ca. W. H. Cottrell

James Johnston
Colley
T. Tyrrell
Callow
Blower and Co.
H. Codd

Great Western Rail-
way S. J. Budd and others
Parte S. J. Barnes
Chapman & another S. J. Reeve
Betts S. J. Wyche
Callow S. J. Jeakinson and others
Badcock and another S. J. Great Western Railway
Langdon, administratrix,
(pauper) S. J. Reddin

Pro. Drake
Pro. Young and Co.
Dt. Tatham and Co.
Pro. In person
Pro. Sweeting
Ca. Maples and Co.

Crowder and M.
C. Walton
Van Sandau and C.
Miller and Carr
R. Ellis
Maples and Co.
Baxter and Co.

Baly S. J. Batard
Grounds S. J. Salisbury
Ogilby S. J. Hansall
Jones and another Clements
Mitcheson S. J. Nicol
Fossick and another S. J. Blane

Ca. Plucknett & A.
Pro. M. Turner
Pro. Philp
Dt. Nixon
Pro. Messrs. Hyde
Pro. Cotterill
Pro. Denton and Co.

Ritzandreich and S.
Dodd and Co.
R. and W. G. Roy
Oliveron and Co.
S. W. Darke
T. Tyrrell

Great Northern Rail-
way S. J. Uziel
Staunton and another S. J. Skeen and another
Gruber and another S. J. Dasiell
Bosanquet, P. O., &c. S. J. Shortridge
Christachi S. J. Lackersteen
Dalton S. J. J. Bech

Dt. Swan
Pro. W. H. Griffin
Pro. Coode and B.
Sci. fa. Johnson and Co.
Pro. Dickson and Co.
Pro. Mullins

Crowder and M.
M. Sangster
Bloxam and E.
Lepard and Co.
Clarke and Co.

Newcastle Railway Com-
pany S. J. Froggatt
Heath and others S. J. Smith and others
Brooks and another S. J. Wilder, extrix., &c.
Williams & another S. J. Hughes
Barrett S. J. Heggart and another

Dt. Sudlow In person
Pro. M'Leod and S.
Pro. Lethbridge and M.
Pro. Gregory, F., and Co.
Pro. Wood and B.

Maples and Co.

Townsend and another,
extrix., exor. &c. S. J. Deacon

Pro. H. Walker

J. B. May
M'Leod and S.
Goddard and E.
Bloxam and E.
Ivimey
Dunn and D.
Milne and Co.
Loveland and B.
Nicholson and P.

Graham and others, assign-
ees, &c. S. J. Stephens
Bousfield S. J. Tinsell and another
Harris and another S. J. Berles and another
Denis Jones
Williams and another S. J. Williams
Stirling S. J. Parry and another
Muir S. J. Western Gas Light Co.
Cocker S. J. Rogers
Simmons Mathews
Shrenspurger S. J. Anderson

Pro. Dickson and Co.
Pro. Palmer and F.
Pro. Marten and Co.
Pro. Gidley
Pro. Gregory, F. and Co.
Pro. Taylor and Co.
Pro. Phillips and Son.
Govt. Gregory
Dt. Lewis and L.
Pro. E. J. H. and J. Lear-
ford

Selby and M.
Gardiner
Goddard and E.
M'Leod and S.
Braikenridge
Ashurst and Son
James T. Pallas
J. H. Taylor

Johnson & others, assoc. Boulcott and another
Fleming S. J. McDonnell
Rose S. J. Castelli and others
Middle and another Rossetto and others
G. P. Hinton Holder
Pare S. J. Miller
Page Oldershaw
Dixie Alexandre

Dt. Baker and Co.
Pro. Tilsen and Co.
Dt. Cox and Stone
Pro. Oliveron and Co.
Pro. Blower and Co.
Pro. Miller and H.
Pro. T. J. Ford
Pro. E. Lewis

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, DECEMBER 8, 1849.

BUSINESS OF THE COURTS.— MICHAELMAS TERM.—REVIEW OF LEADING CASES.

THE customary and anticipated dulness of Michaelmas Term is more than justified, by a perusal of the proceedings of the Courts of Law and Equity during the last month. No incidents of a remarkable character, beyond those noticed at the commencement of the Term, (*ante*, p. 3.) have attended its progress or marked its conclusion, and although many cases were argued and decided, deserving of professional attention, the Term can scarcely be associated with the recollection of any great ease, or of any notable change in respect of the individuals who practise or preside in the Courts.

The business of all the Courts, so far as it concerns interlocutory proceedings, is gradually but sensibly diminishing; and the reduction in this branch of practice is not yet compensated for, by any proportionate increase in matters of more weight. As we have repeatedly had occasion to observe, professional prosperity follows the phases of national prosperity, and when commerce and credit recover from the rude shock they received by the occurrences of the three years preceding the last, but not before, lawyers may reasonably hope to participate in the general improvement.

The case of most importance in a public view, coming under the consideration of the Courts since the commencement of Michaelmas Term, is undoubtedly that of *CoAon v. Wilkinson*,* which was brought before the Lord Chancellor early in the Term, by way of appeal from an order for an injunction previously granted by the Master of the Rolls, and which the Chancellor disposed of without hesitation, by affirming the order made by Lord Langdale, and adding his

unqualified approval of the principle on which the order was founded. The facts involved in this case are short and simple. The "Direct London and Portsmouth Railway Company," obtained an act in 1846, for making a railway from Epsom to Portsmouth, an estimated distance of 56 miles. The capital of the company was to be 1,500,000*l.*, which was to be divided into 30,000, 50*l.* shares. The sum of 5*l.* 5*s.* per share had been called up, but no part of the line had been actually commenced, although the powers of the company for the compulsory purchase of land expired on the 26th June, 1849. The directors of the company had no immediate intention of proceeding with the projected line to Portsmouth, but they contemplated a line from Epsom to Leatherhead, a distance of only four miles, and made an arrangement in reference to this line with the Brighton Company, in respect of tolls, subject to the approval of an extraordinary meeting of shareholders. The plaintiff, an original shareholder, filed his bill in June, 1849, praying that it might be declared the directors were not empowered to apply the funds of the company in making the line from Epsom to Leatherhead, and that they might be restrained from taking or purchasing lands for that purpose on behalf of the company, and from constructing any part of such line. The Master of the Rolls thereupon granted an injunction, restraining the company from constructing a part of the line only, except with a view to the completion of the whole line, which injunction it was now sought to discharge. The Chancellor thought the only question in such cases was, whether the purpose to which the directors proposed to apply the subscribed capital was that for which the capital was subscribed? If the directors meant to construct the line to Leatherhead in part execution of the line to

* See *ante*, p. 65.

Portsmouth, the injunction did not prevent them from so doing; but if it were meant to stop at Leatherhead, the project was entirely different from that in respect of which the plaintiff subscribed his money, and the directors had no legal power to carry it out. The appeal was therefore refused with costs. Considering the numerous instances in which various railway directories have abandoned the main features of their original schemes, and adopted portions of the plan, the execution of which were deemed practicable, and bearing in mind the vast variety of contracts and agreements entered into by directors in respect of such modified schemes, the importance of this decision of the Court of Chancery can scarcely be over-rated.

In the Queen's Bench a settlement case involving the construction of the recent statute, 8 & 9 Vict. c. 117, s. 2, was determined, and as it involves a point of some general interest, is deserving of notice. Two infants, the children of Irish parents, who had themselves acquired no settlement, were born in Sheffield, and being deserted by their father upon the death of their mother, became chargeable to the parish of *All Saints, Derby*. The question was, whether the children under these circumstances were properly removed from All Saints, Derby, to Sheffield, or whether they ought to have been removed to Ireland, under the 8 & 9 Vict. c. 117. The Court decided, that the father having deserted his children, it was impossible to comply with the requirements of the act as respected him, and that without such compliance the infants were not legally liable to be sent to Ireland, and were properly removed to the parish in which they were born.

The only cases besides those noticed, which call for any particular attention, are cases rather of professional than of general interest.

In the matter of *Humphreys*,^b the Court of Queen's Bench made a rule absolute for an attachment against a Welsh attorney, who had signed the Roll upon payment of one shilling, under the 1 Will. 4, c. 70, but had never been admitted to practise in the Superior Courts at Westminster, for prosecuting an action in the Queen's Bench as an attorney against a defendant residing in the Temple. This decision settles the question—if indeed it ever admitted of serious doubt—that a Welsh attorney entering his name on the Roll, as provided by the 1 Will. 4, c. 70, s. 16, is, except as to

cases where the defendant resides in Wales, in the same position as a person who has never been an attorney, and that to entitle him to practise in the Superior Courts at Westminster, he must be admitted an attorney of those Courts, and pay the additional duty. The attachment, however, was ordered to lie in the Master's office until next term, that Mr. Humphreys may take steps to get himself admitted, in which case it was intimated that the process would not be enforced.

Two cases, both of which involved questions of some professional interest, were mooted—one of them only decided—in the Court of Exchequer at the close of Michaelmas Term last, to which we make no apology for directing attention.

The first was a case, *In re Steadman, ex parte Hall*, where Master Bennett, to whom an attorney's bill was referred, at the instance of the client (Hall), with permission to dispute the retainer, refused to receive the affidavit of the client, and upon this ground a rule was moved to show cause why the Master should not review his taxation; and it was contended in support of the rule, that a reference to the Master under such circumstances resembled an ordinary reference to arbitration, where the parties might be examined, and was not like a trial at Nisi Prius, where the parties could not be witnesses. The Court agreed that the Master had authority, upon such a reference, to receive the affidavits of the parties if he thought fit, but it was not incumbent upon him so to do: he was entitled to exercise his discretion. So far the matter was altogether analogous to an ordinary reference to an arbitrator, but Master Bennett having reported that he had no doubt of his power, but had declined to receive the client's affidavit in the deliberate exercise of his discretion, the Court declined to interfere.

In the same case a second point arose of somewhat more importance. The attorney had included in his bill the charges for defending an action against the client in the Palace Court, of which the attorney was not himself an attorney, but where he had been represented by one of the attorneys of that Court. The effect of the insertion of these charges was, that less than one-sixth was struck off on taxation, and that the costs of taxing consequently fell upon the client. If the charges for conducting the defence, in the Palace Court had not been included in the bill, but merely the cash paid to the Palace Court attorney, the result of the taxation, it was stated, would be

^b See *post*, p. 106.

different, and the bill would have been reduced more than one-sixth. It was submitted upon these facts, that under the true construction of the 35th section of the 6 & 7 Vict. c. 73, the attorney had no right to any profit in respect of the conduct of a cause in a Court in which he was not admitted an attorney. Here the attorney was an attorney of the Superior Courts and not an attorney of the Palace Court, and it was insisted that he ought not to have taken up business in the Palace Court, and if he did, could derive no profit from it. It was said that the law, under the statute 2 Geo. 2, c. 23, was different, and that under that act attorneys had been in the habit of employing clerks in Court in the Exchequer, and properly charging their clients with a profit upon the business transacted by such clerks, but the language of the 6 & 7 Vict. c. 73, prohibited an attorney from acting in any Court in which he is not enrolled, and the attorney whose bill was now under consideration, not being on the roll of attorneys of the Palace Court, was not entitled to make any charges in respect of services there. Baron Parke observed, that it was still an undecided question whether an attorney of the Superior Courts was not entitled to be admitted on the roll of other Courts. The question had been before the Court of Error upon a question as the right of an attorney to practise in the Lord Mayor's Court, but the case was disposed of on a point of form, and no decision was come to on the merits. It was fit that the question now raised should be further considered, and the Court would therefore grant a rule to show cause upon this point only.^a This rule was granted on the last day of Term, (the 29th November,) and

according to the practice of the Court will be disposed of in next Hilary Term. The question appears to turn altogether upon the meaning which the Court thinks should be put upon the words "without being admitted and enrolled as aforesaid," in the 35th section; and this question, we apprehend, will be found to have already received a conclusive and satisfactory determination in the case of *Hulls v. Lea*, (Reported 10 Queen's B. 940,) where the question was, whether an attorney of the Queen's Bench or Common Pleas can recover for work done by him in the Court of Exchequer through the instrumentality of an attorney of the last-named Court; and the Court decided that the words "admitted and enrolled" in the 35th section of the 6 & 7 Vict. c. 73, must be referred back to the 2nd section, from which it appeared that any attorney duly admitted according to the statute in any of the Superior Courts had the general capacity to practise as an attorney and was under no disability with respect to costs, by suing out writs in the name of another attorney admitted to practise in the Court.

The second case referred to in the Exchequer was a case of *The Attorney-General v. Shillibeer*, where the defendant was convicted for an offence under the Post Horse Duties Act, and the Queen's Remembrancer, in taxing the costs for the Crown, under the statute 2 & 3 W. 4, c. 120, s. 101,^b allowed the charges of the Solicitor of Inland Revenue, who conducted the case on behalf of the Crown, for attendances, &c., as if he had been an ordinary solicitor, although it appeared by affidavit that the solicitor in question is paid by an annual

^a The 35th section of the 6 & 7 Vict. c. 73, upon which this question is supposed to have arisen, is as follows:—"That from and after the passing of this act, in case any person shall, in his own name or in the name of any other person, sue out any writ or process, or commence, prosecute, or defend any action or suit, or any proceeding in any Court of Law or Equity, without being admitted and enrolled as aforesaid, or being himself the plaintiff or defendant in such proceedings respectively, every such person shall and is hereby made incapable to maintain or prosecute any action or suit in any Court of Law or Equity for any fee, reward, or disbursements, on account of prosecuting, carrying on, or defending any such action, suit, or proceeding, or otherwise in relation thereto; and such offence shall be deemed a contempt of the Court in which such action, suit, or proceeding shall have been prosecuted, carried on, or defended, and shall and may be punished accordingly."

^b The section under which these costs are payable to the Crown is as follows:—"That all duties granted or imposed by or incurred under this act may be sued for and recovered by all such ways and means and in such manner and form as are and is, or at any time hereafter shall be, provided by law for the recovery of any other duties granted or imposed by or incurred under any other act relating to stamp duties, as well as by the particular ways and means provided by this act; and in all actions, bills, plaints, informations, and proceedings to be commenced, prosecuted, entered, or filed in the name of his Majesty, or of any other person, for the recovery of any such duties, or of any debts or penalties which may be incurred or become payable under this act, it shall be lawful for his Majesty, or any other person legally entitled to sue or prosecute for the same, to have and recover such duties, debts, and penalties, with full costs of suit and all other reasonable charges and expenses."

salary, and that his attendances in respect of this cause entailed no additional expense on the Crown. The rule *was* granted in this case was chiefly important as it created some doubt whether, if the rule could be sustained, the same principle might not be applicable to corporations or public companies paying their solicitors by fixed salaries, as well as to solicitors acting under various departments of the government. It must be borne in mind, however, that the statutes under which ordinary parties are entitled to costs are not in precisely similar terms to that upon which the Crown proceeded in the *Attorney-General v. Shillibeer*, but we should have been astonished to find it maintained, in that or any other case, that the title of a successful party to costs could be affected in any degree by the private arrangement he might think fit to make with his own attorney or solicitor. The point was fully argued before Barons Parke, Alderson, Rolfe, and Platt, on Tuesday last, and after taking time to consider, those learned judges came unanimously to the conclusion, that the Crown was entitled to the same costs in respect of the solicitor as any other successful party, without regard to the terms upon which the solicitor was compensated by the Crown. The question, therefore, may be fairly considered as settled.

VICE-CHANCELLOR KNIGHT BRUCE AND THE BANKRUPTCY ACT.

We have been reminded that the letter addressed by Vice-Chancellor Knight Bruce to Mr. *Walpole*, Q. C., one of the members of the 'Commons' Committee on the Bankruptcy Act, which excited so much observation at the time it was written, and so much anger on the part of Lord Brougham and others subsequently, has not yet been laid before the public. We now print it from the Report of the Evidence—Appendix, page 94.

"I venture to trouble you with some observations connected with the pending Bankruptcy Bill, which you will find in some degree, but not wholly, a repetition of statements made by me before the Committee on Saturday last. So far especially as there is repetition, accept my apologies at the outset.

"My opinion is in favour of the practicality and expediency of uniting bankruptcy and insolvency in one system: the objections capable of being urged against such a measure appearing to me far overbalanced by the reasons for it, without taking into account the very discreditable inconsistencies and anomalies occasioned by the present existence of each system separately.

"The persuasion that this union must ere long take place, and that it must probably

effect various alterations in each branch, has had perhaps a tendency to render me not very anxious as to the state of the Bankruptcy Law by itself. One of the Committee, indeed, seemed to attribute to me the opinion that it is incapable of amendment: I did not, however, express or intimate, nor have I ever entertained, any such notion. But not every person nor every remedy is capable of doing good: and with regard to the bill (changed considerably, I believe, from its original state,) the bill as it stands printed, I retain the opinion, that so far as it is not objectionable, it is of little importance: 1. Because the effect of the bulk of it is to enact, by way of consolidation, (in a form of which I need say nothing,) existing law and existing practice; a consolidation that may, if accurately and well done, be found convenient, but is not at present, I conceive, needed. 2. Because the extension and enlargement of the Commissioners' jurisdiction, if desirable, (and in some degree at least it is probably desirable,) may be effected by the Great Seal, (without a new statute,) under the act of 1842, (sect. 66,) as I believe; for if this has been repealed, I am not aware of it. 3. Because the proposed pecuniary savings can, so far as they may be proper, be to a great extent, if not wholly, effected by the government or the Lord Chancellor, inasmuch as fresh appointments on certain vacancies may, if the exigencies of the public service shall permit, be omitted or suspended; the officers whose offices are proposed to be at once abolished, not receiving compensation, but continuing to hold them, having or not having successors as the government or the Lord Chancellor shall deem to be right. (These latter offices, if I do not mistake, are, with the exception of that of the Secretary of Bankrupts, humble and small.) And 4. Because though not quite sure whether in so voluminous a document I have discovered every instance in which intentionally or otherwise it changes the existing law or existing practice, yet, believing that I am aware of every important instance in which it changes either, I think that it does not alter the actual state of things for the better in any one respect of importance in which legislation is necessary to effect a change.

"But I have said that I think, and I again declare my opinion, that it changes the law in some important respects dangerously and for the worse. And I am satisfied that many of those who profess to desire the bill are, as to various points, (I mean points of consequence and general interest,) not aware of the powers, extent, or provisions of the Bankrupt Law as it stands; and that great numbers of them, justly condemning and complaining of the frequent frauds committed against creditors of bankrupts, expect more from legislation, by way of protection and remedy, than legislation can do.

"Preferences (for example) of favoured creditors cannot altogether be prevented or obviated; the existing law has provisions directed against them.

"To extend these provisions violently or incautiously may produce much more injustice and mischief than the evil attacked. To friends and relatives debts are often due of the fairest and most just description. What law can prevent a man who is at hand from having any advantage over one who is at a distance?"

"It cannot be necessary that a supine creditor and an active creditor should be placed on the same footing; nor should the endeavour to procure a larger dividend for a debtor's unpaid creditors carry us on to disregard the consequences of adding uncertainty to mercantile transactions, or the ruin that may be inflicted on a satisfied creditor required to refund, though he has acted honestly and expended the money received. Freedom of action in paying or securing a debt (whether on the debtor's or the creditor's part) may be restrained arbitrarily or mischievously even in a case of embarrassment. An executor often, a man out of trade always, may pay one creditor in full, leaving the others knowingly not a shilling; this power I agree should in the Bankrupt Law be restricted, but with temperance, with moderation, and with views embracing more than one side of a question.

"I think that the bill, in this branch of the law especially, contains very incautious enactments, likely, if passed, to cause little or no good, and enormous injustice.

"I ought not, however, to go into points on which I answered fully before the committee; to whom I did not mention (though I believe that I did to you) my opinion of the harshness of the 23rd and 24th sections of the act of 1842 against bankrupts unwilling to be so. These are, I believe, with some alteration, incorporated in the bill, but as incorporated in it, are still, I think, too harsh. I make this remark upon the footing of Lord Lyndhurst's decision in *Thorold's Case*, on the construction of the 24th section differing, and I dare say rightly differing, from mine. You have probably noticed, with reference to the 23rd, that the bankrupt is not required to be served personally with the "duplicate" of his "adjudications;" that he may be honestly absent from his "usual place of abode or place of business;" and that though "within the United Kingdom at the date of his adjudication," he may on the next day honestly leave it in ignorance of the fiat, and may so or otherwise, without negligence and without unfairness, remain ignorant of it until irretrievably and irremediably a bankrupt, though he ought not to have been so declared if a trader, and though he was not a trader.

"Let me also (though this, too, is perhaps repetition) say how much I hope that if the new jurisdiction of appeal proposed by the bill shall be created, it will be thought right to state in plain and clear terms whether the Vice-Chancellor is or is not to receive fresh evidence; and if not, how he is to be informed of the testimony given orally before the Commissioners, from whom there is an appeal. You have probably observed that the bill contains a clause which appears to suppose the

taking of oral evidence before the Vice-Chancellor and the Lord Chancellor respectively, though the latter is not to be a judge of fact.

"I beg leave to suggest, moreover, the expediency of the Committee satisfying themselves by sufficient evidence of the quantity of substantial business in bankruptcy (exclusive of matters unopposed, which are not always, of course) that is transacted before the Vice-Chancellor and by the Registrar in Bankruptcy attached to his Court; for I believe there to have been (I do not say intentionally) very much misrepresentation and to be much misapprehension in this respect. You are well aware that besides appeals, (those strictly and those not strictly so,) there is much business of importance thus transacted which is altogether matter of original jurisdiction. Of this, some part at least may, probably will, (as I have said,) be transferred, by order of the Lord Chancellor, or otherwise, to the Commissioners. Whether the whole ought or ought not to be so, is a question upon which I have not made up my mind;—opinions entitled to respect differ on the point, or did so lately.

"I do not wish these remarks communicated to the Committee unless you shall think that they are worth being so, and ought to be so. I beg you to exercise your discretion freely on the subject.

"P.S.—You are, I believe, aware that the bill creates new subjects of appeal from the Commissioners in Bankruptcy, and out of it. My opinion, however, of the improbability of any substantial diminution of business in the Court of Chancery arising from the bill, is not caused or increased by that circumstance."

NOTICES OF NEW BOOKS.

A Treatise on the Stamp Laws in Great Britain and Ireland: being an Analytical Digest of the Statutes and Cases; with Practical Observations thereon: together also with a Table of Stamp Duties payable throughout the United Kingdom, &c., &c. By HUGH TILMUEY, Assistant Solicitor of Inland Revenue. Second Edition. London: Stevens and Norton; T. Clark, Edinburgh; and Hodge and Smith, Dublin. 1880. Pp. 896.

WE have often noticed the policy as well as the justice of appointing duly qualified persons to the office of Solicitors to the Government Boards. We mean, of course, persons who have served a clerkship according to the act of parliament and rules of Court, and have been in actual practice in their profession, and who, if admitted on the Roll within the last twelve years, must have undergone an effectual examination. The practice of appointing *standing counsel* to each department of the government is both expedient and just. Besides the At-

torney and Solicitor-General, there should be some member of the Bar to devote his attention to the law and practice of each branch of the affairs of the State, and thus become peculiarly fitted to advise and assist the government. But we hold it to be contrary to sound principle to appoint a barrister to the office of Government Solicitor, and though an act of parliament was passed to authorize that anomaly, the barrister-solicitor is obliged, in conducting the business of his office, to employ a solicitor in actual practice.

We advert to this topic as one of the grievances of the attorneys, because the propriety and prudence of appointing an attorney is strongly exemplified in the important Office of Stamps and Taxes, now including the whole Inland Revenue. It is well known that the extent of the business of this large department requires a Chief and an Assistant Solicitor, both of whom are duly qualified attorneys. The work before us, which has rapidly arrived at a second edition, is the production of Mr. Tilsley, the Assistant Solicitor, and it is highly creditable to his intelligence and his industry. It is peculiarly the duty of the solicitors to be familiarly acquainted with all the provisions of this branch of the Revenue Laws and the exemptions or exceptions thereto. And though they are well versed in the intention of each section of the Stamp Laws, they are bound to watch the *constructions* which from time to time may be put by the Superior Courts upon doubtful questions which are brought before them. Hence the peculiar fitness of the Solicitor of the Board of Stamps to the compilation of a useful work of this nature.

Mr. Tilsley, in introducing his second edition, observes, that in preparing his work originally for official purposes, his object was to form a perfect compilation of all enactments relating to the Stamp Revenue;—that on publishing the result of his labours, much that did not concern the public was omitted, but the first edition was still encumbered with matter not generally useful to the practitioner. In the present edition he has therefore omitted such parts as appeared unnecessary, and in lieu has made many important additions, particularly relating to *Conveyances, Mortgages, and Legacy Duties*;—all of which subjects are peculiarly interesting to the profession. He has also carefully added the result of all the cases which have been decided since his publication in 1847. Mr. Tilsley's book now forms a most complete

and accurate treatise on the Stamp Law. It is a peculiarly safe guide in doubtful cases, for as an officer of the revenue he naturally inclines to the larger amount of duty, though we must say he fairly states the questions at issue.

The following are the contents of the work:—

“Introductory matter, relating to subject of a general character connected with the Stamp Duties on instruments.

Admissions to Corporations or Companies; Advertisements; Affidavits; Agreements; Appointment to Offices; Appraisements and Appraisers—Awards; Apprentices; Articled Clerks; Attorneys and Solicitors, &c.

Bills of Exchange and Promissory Notes—Bankers; Bill of Lading—Charter Party—Certificate or Debenture for Drawback; Bonds.

Cards and Dice; Conveyance on Sale; Copyhold Estates.

Denoting Stamp; Discount and Allowances—Drawback.

Forgery—Fraud.

Instruments, General Enactments relating to “Subdivisions:—1. The local extent of the operation of the Stamp Laws; 2. The stamping of executed instruments; 3. The admission of unstamped instruments in evidence for collateral purposes or otherwise; and, herein, as to secondary evidence; 4. Instruments relating to several distinct parties or matters; 5. As to the effect of alterations made in instruments after execution; 6. The proper time for objecting to the admissibility of an unstamped instrument in evidence; 7. The power of enforcing the production of an instrument to be stamped; 8. Matters relating to special pleading in reference to Stamp Duties; 9. Instruments subjected to the common deed duty.

“Insurance against Fire; Insurance, Marine, &c.

Lease; Licence to sell Stamps; Medicines. Mortgage; Newspapers; Pawnbrokers.

Penalties for Offences; Plate; Postage Stamps. Progressive Duties; Public Officers; Receipts.

Schedule referred to in a Stamped Instrument, not annexed; Spoiled Stamps; Stamps, various General Enactments; Surrender.

Release—Renunciation—Disclaimer.

Probate Duty; Legacy Duty; Table of Present Stamp Duties in Great Britain and Ireland.

Table for Calculating the Value of an Annuity for Legacy Duty.

Table of Stamp Duties in Lieu of Fees in Bankruptcy in England.

Table of certain Stamp Duties in Ireland.

(Law and Equity Fund).

Table of Duties Payable in Great Britain prior to 10th October, 1804.

“Appendix:—Abstract of Statutes in Ireland relating to Stamp Duties; A List of Statutes granting Stamp Duties in Great Britain, or otherwise relating thereto.

“Addenda:—Agreement—Conveyance—Several Parties; Venue—Material Evidence.”

RUMOURED EXTENSION OF COUNTY COURTS.

To the Editor of the Legal Observer.

SIR,—I see a paragraph in circulation among the papers, in connection with the appointment of Mr. Serjeant Dowling to the judgeship of the York County Court, to the effect that it is the intention of government to increase the jurisdiction of the County Courts to 50*l*. If such be the fact, it is time for the members of the law in this country to be "up and doing," no longer treating measures vitally affecting their interests with a supineness which has become proverbial, and which arises, as I believe, not from a want of interest on the part of the influential members of the profession in the welfare of their order, but from an absorbing occupation which abstracts them pretty nearly from all other matters. It is impossible to disguise that this contemplated change is fraught with something very like ruin to an immense proportion of lawyers, be they barristers, attorneys, or attorneys' clerks, or who they may;—to parties who have spent heavy sums on their education, and have also paid heavy sums to government,—who have borne patiently the briefness and clientlessness of years, or it may be have been struggling with a partial success to get a footing, and now their hopes are to be destroyed and their chance of a livelihood taken away. From those too who are enjoying established practices a large part of their income will be taken.

But it is not, sir, on grounds like these, strong though they may be, that I would oppose the contemplated measure. What! if it passes, is to become of the science of the law? Where are its great professors,—its Bacons, its Somers, its Hardwickses, and its Eldons,—to be nurtured for the future? Are you to find them pleading, disputing, denying and quarrelling in some provincial County Court, where "a barrister of seven years' standing," but of seven years' standing idle, dispenses his *cadi*-like justice, with honest intentions undoubtedly, but with tolerable forgetfulness of the profound and just principles of the law? Where will Westminster Hall with all its sacred traditions of centuries soon be?

Then on the subject of the present supposed expense of litigation. In the name of all that is just let there be *cheap* law, but make it cheap (as you have often said) by taking off the fees on justice,—do not make it cheap by taking the remuneration out of the pockets of the attorneys, limiting them by statutory tyranny to some ridiculous trifle, and by putting on larger fees to pay a large and unnecessary staff of officials, or it may be to go to government itself. Do what you will, you cannot do away with certain ministers of justice—you cannot dispense with witnesses—you cannot dispense, where the sum is important, with advocates,—and you cannot dispense in the present state of society with agents, i. e., attorneys to make a preliminary investigation, or "get up" the

facts of the case. Will it be declared that none of these parties is to be paid for his trouble? Will it be enacted that a barrister shall not have his statutory fee of five guineas, and an attorney his taxed allowance of two guineas per diem. In the name then of their order, let the ten thousand professors of the law:—Serjeants, Queen's counsel, Barristers and Attorneys,—awaken to a sense of their position and say, with one and a determined voice, that such things must not be. Let them call meetings, address the government and address the press, and let there be union and decision in resisting the proposed measure. Let there be a real fellowship, united to save their common profession from destruction. FAS.

FIRE CAUSED BY A RAILWAY ENGINE.

An important trial took place before L. C. J. *Wilde*, on the 28th July, at Norwich, in an action for compensation for injuries to a barn, stables, and granary, by the burning cinders and coke projected from an engine passing on the Norfolk railway. The evidence was conflicting as to the cause of the fire, and the degree of care and attention used by the company's servants.

The *Chief Justice* summed up the evidence to the jury, who (he said) were to decide, first, whether the fire had been occasioned by the projection of hot cinders from the engine of the defendants; and, if so, whether such a state of things resulted from the negligent omission of such reasonable precautions as were in their reach? If the plaintiff should satisfy them on the first of these questions as to the cause of the fire, it would become the duty of the defendants to show that they had not been guilty of negligence. On that point they had had the evidence of scientific men on both sides. On the part of the plaintiff, Professor Fairley had pointed out various means by which the emission of such dangerous projectiles might be checked; and those means had been combated by the witnesses of the defendants, on the grounds of expense, trouble, and inconvenience. Now, no matter what the trouble, expense, and inconvenience might be to a railway, they were bound to resort to all reasonable precautions to obviate the risk of damaging life and property along their line; and if after due caution and notice they omitted to do so, they would be guilty of negligence, and would be liable in the event of damage done by their engines. In this case it did not appear that the defendants had adopted any expedient whatever to check the emission of fire, though the tenant of this farm had drawn their attention to the fact that the grass had frequently been set on fire near his house and farmyard, and it would be for the jury to say whether the means pointed out were or were not of such a reasonable nature as to call for their adoption.

The jury deliberated 20 minutes, and returned a verdict for the plaintiff, expressing it to be their opinion that the defendants had been guilty of negligence.

EXCLUSIVE AUDIENCE OF THE BAR.

INSOLVENCY CASES IN THE COUNTY COURTS.

"*The Press*" of Ireland on the 29th Nov. contains the following article on the question raised at the York County Court. Our contemporary appears to pay constant attention to all the alterations in the Law and the just interests of the Profession.

"A Mr. Blanshard, of the English Bar, has revived the antiquated, and, as we believed, abandoned claim of counsel to have, not only *pre-audience*, but '*exclusive audience*,' in Courts of inferior jurisdiction. In another column we extract an article on the subject from the *Legal Observer*, which will be read with considerable interest by the members of both branches of the profession here. The claim made by Mr. Blanshard in the name of his brethren does not appear to have been supported or seconded by any other barrister; and the learned gentleman seems to be entitled to all the glory of this novel expedient to compel the public to employ counsel whether they like it or no. There can be no doubt that the monopoly claimed in the name of the Bar—but which we believe no respectable barrister would desire to see conceded—is utterly indefensible; and we are only surprised that so intelligent a man as Serjeant Dowling should have hesitated for a moment in determining against him.

"This claim, it will be seen, was made in relation to a branch of business imported into the County Courts, where the attorney is the recognised advocate—his status and fees as such provided for and regulated by act of parliament. The views reflected by this state of things were very clearly and forcibly put by Mr. Barker; and certainly, comparing the matter and manner of his reasoning with the style and substance of Mr. Blanshard's arguments, we are not at all surprised at the latter gentleman's anxiety to establish the doctrine of compulsion contended for by him.

"It is to be hoped that this occurrence will not disturb the harmony which, it is gratifying to observe, has been latterly growing up in the intercourse between attorneys and barristers. As far as the report discloses, Mr. Blanshard seems to have stood alone in the affair, and to

have been wholly unsupported in the singular attempt made by him on the occasion."

We understand that the question will not be decided till the next Insolvency Court, to be held on the 26th January.

ARTICLED CLERKS ENGAGED AS DORMANT TRADERS.

We have received the following statement of a case on this subject:—

"A. B., an articulated clerk, has some relatives from whom a sum of money is owing on note to him. He is desirous of paying them some additional sum, and for the whole amount to have a share of the profits of the business, with a power of attorney given to him to get in the debts and to prevent his intended partners from suffering persons to remain too long indebted to the intended firm, also as a security for what he pays and allows to remain in the concern. A. B.'s name would not appear in the name of the firm, nor would he take any active part, so as to be considered a working partner, but merely look to the books occasionally to see how things went on and for his own security. Of course a partnership deed would be drawn out and executed. Under these circumstances would A. B.'s being a *dormant partner* be any objection to his being admitted as an *attorney and solicitor* when the period of his clerkship expires? If not, it is presumed that it would not be an objection to his practising afterwards. The business is a manufacturing and wholesale one."

We think the articulated clerk should take the best security he can for the payment of interest on the money lent, and should not be a partner "*dormant*" or otherwise. If it could be shown that his secret partnership with his relations did not interfere with his serving his clerkship for the full period required in the proper business of an attorney, he might be admitted; but we think that strictly, neither as an articulated clerk nor as an attorney, can he properly be engaged as a *dormant* manufacturer. To be a respectable and successful lawyer he must be wholly devoted to his profession.—Ed.

CANDIDATES WHO PASSED THE EXAMINATION.

Michaelmas Term, 1849.

Names of Candidates.

To whom Articled, Assigned, &c.

Abell, George Metlow	..	..	Francis Higgins, Ledbury
Aiken, Frederick	..	..	George Vincent, 9, King's-bench-walk, Temple
Addenbrooke, Thomas	..	..	Charles Pidcock, Worcester; Charles Frederick Darwall, Walsall
Alder, George Ralph	..	..	Addison Thomas Stevenson, late of Berwick-upon-Tweed, now of Darlington
Armishaw, Ralph	..	..	John Armishaw, Rugeley
Armstrong, John Knight	..	..	George Harper, Whitehouse
Atkinson, John William	..	..	John Atkinson, Leeds

Bagshaw, John, jun. . . . .	. John Bagshaw, Manchester
Bailey, Arthur . . . . .	. Parsons and Benn, Mansfield; Edward Savage Bailey, 5, Berner's-street
Barnett, Robert Henry . . . . .	. Thomas Higson, Manchester
Bendle, Joseph . . . . .	. Robert Bendle, Carlisle
Brewster, John . . . . .	. Thomas Swarbreck, Thirak; John Eden, Liverpool
Brewster John Thompson . . . . .	. John Brewster, Nottingham
Barroughs, Francis Cooper	. Henry Davies, Weston-super-Mare; Robert Davies, Wells, Somerset
Caddy, Harrington . . . . .	. William Evan Price, Torrington
Cann, John . . . . .	. Abraham Cann, Nottingham; Francis James Ridsdale, Gray's-inn.
Carr, George . . . . .	. Robert Meggey, 8, London-street
Cates, Francis Nethersole . . . . .	. George Cates, 23, Fenchurch-street
Catell, Christopher William	. John Orde Hall, 1, Brunswick-row
Challinor, Joseph . . . . .	. William Challinor, Leek
Clarke, Frederick Fuhrmann	. Thomas Hamilton; 4, Henrietta-street, Covent-Garden; Charles Few jun., 2, Henrietta-st.; Charles Harwood Clarke, 15, Chancery-lane
Corn, Watson . . . . .	. James Vallance, 4, King's-bench-walk, Temple
Cox, Jechonias . . . . .	. Thomas Gittton, Bridgnorth
Cox, Peter, jun. . . . .	. Peter Cox, Beaminster; John Swarbreck Gregory, 1, Bedford-row
Davies, Charles, jun. . . . .	. Charles Davies, sen., Southampton; Abel Jenkins, 8, New-lan
Davy, Robert Manning . . . . .	. Robert Davy, Ringwood
Dutton, William Henry . . . . .	. William Dutton, Chancery-lane; William Augustus Sadler Pemberton, 4, Symond's-inn
Eddowes, Thomas Storer . . . . .	. Francis Johnson Jessop, Derby
Emmet, Charles Alexander	. George Nelson Emmet, 14, Bloomsbury-square
Fielding, George . . . . .	. Edward Elwin, Dover
Forster, William . . . . .	. Edmund Minson Wavell, Halifax
Gabb, Baker John . . . . .	. Baker Gabb, Abergavenny
Games, William . . . . .	. Thomas Lawrence, Broom
Gardner, Bladen . . . . .	. Robert Furley, Ashford
Garnett, George Henry . . . . .	. T. Shepherd, Bewerley; William Graburn, Barton-upon-Humber
Giles, Joseph . . . . .	. George Nelson Emmet, 41, Bloomsbury-square; Joseph Parker, Loughborough
Goble, Binsted . . . . .	. Charles Henry Binsted, Portsmouth; James Bartholomew Lowndes, New-inn
Goode, Henry Sale . . . . .	. Philip Goode, Howland-street
Greene, John . . . . .	. Thomas Robinson, Leeds
Griener, James Anselm . . . . .	. Frederick Pratt Barlow, 4, New-bridge-street, City
Gwynn, John Crowther . . . . .	. Edmund Lloyd, Thornbury
Hall, Clarence . . . . .	. William Slater, Manchester
Hamilton, Charles, jun. . . . .	. Edward Byrnes, 23, Southampton-buildings
Hargrove, James Sidney . . . . .	. Luke Thompson, York
Hazard, William Martin . . . . .	. William Hazard, Harleston
Hensley, Thomas William, B.A.	. Daniel James Lee, Bedford-row
Hook, Charles . . . . .	. John Luke Watten, 48, Conduit-street, Hanover-square
Horner, Edward Anthony . . . . .	. William Stoughton Vardy, Finabury-place; John Meagher, Frederick-street, Gray's-inn-road
Hudson, Benjamin . . . . .	. Henry Vickers, Sheffield
Humphreys, Charles Octavina	. William Corne Humphreys, Giltspur-chambers
Ingleby, Clement Mansfield, B.A.	. Clement Ingleby, Birmingham; George Paulson Wragge, Birmingham
Jackson, Robert Edwin . . . . .	. James Groves, jun., 25, Charlotte-street, Bedford-square
Jackson, William Henry . . . . .	. Edmund John Scott, 6, St. Mildred's-court, Poultry
James, John Hody . . . . .	. Henry James, Exeter; Edmund William Paul, Exeter
Kent, Francis Jackson, jun. . . . .	. Francis Jackson Kent, sen., Hampton
King, George Farquharson . . . . .	. Frederick Overy, 13, Tokenhouse-yard
King, Richard Chapman . . . . .	. John Frederick Isaacson, 40, Norfolk-street, Strand
Kingdon, Paul . . . . .	. Samuel Dukinfield Derbyshire, Manchester; Edward Hunt Roberts, Exeter
Law, Charles John . . . . .	. Alexander Sharnan, Bedford
Leach, Alexander Johnstone	. Charles Calvert Corner, 36, Mark-lane
Mann, Henry John Marshall	. James Gill, Manchester; Edward Bent, Manchester
Martin, Thomas . . . . .	. John Neal, Liverpool
Miller, Charles Samuel . . . . .	. Samuel Frederick Miller, Sussex-chambers, Duke-street
Miller, Francis . . . . .	. Henry John Mant, Wood-street, Bath; Frederick Maples, 6, Frederick's-place, Old Jew
Moser, William Patison . . . . .	. Roger Moser, Kendal
Mozon, Henry . . . . .	. George Dunn, 2, Raymond-buildings, Gray's-inn
Nelder, George William . . . . .	. Frank Isaac Nelder, Shepton Mallett; Alfred Henderson, Bristol
Page, George . . . . .	. George Augustus Page, Birmingham
Parker, Reginald Amphlett	. Arthur Ryland, Birmingham; Robert Jackson, 41, Bedford-row
Paton, Robert . . . . .	. Henry Christian, Liverpool
Peake, Thomas Hugh . . . . .	. Robert William Peake, 11, New Palace-yard
Peacock, James . . . . .	. Charles Holme Bowyer, 46, Chancery-lane
Pennell, Richard . . . . .	. Edward Caruthers Little, Stroud; John Gurney, Stroud; George Watten, Stroud

Petgrave, Ezekiel Charies Thos.

Johnson	Philip Richard Falkner, Newark-upon-Trent
Pittman, William, jun.	Charles Fidley, 3, Paper-buildings, Inner Temple
Plowright, John Stenson	George Molini Cowley, Nottingham
Pollard, Samuel	John Bassett Collins, Bodmin
Postans, Richard Broadhurst	Robert Marriott, late of Colchester, now of Brussels; John Frederick Robinson, Hadleigh
Rayson, Edward Knowles	Mark Fothergill, Selby; George Hodgkinson, Thorne; Charles Bell, 36, Bell, Bedford-row
Reed, George Barras	William Edward Brockett, Newcastle-upon-Tyne
Reed, Joseph James	Anthony Guy, Lymington; George Robins, New-inn
Reynolds, John James	Thomas Hardwick, Hereford
Richards, Thomas Morton	Charles Richards, Llangollen
Rickman, Philip	George Augustus Crowder, 57, Coleman-street
Robinson, William	Richard Wilson, York; William Richardson, York
Rowson, Alfred	Peter Nicholson, Warrington
Rutter, William	Thomas Munnings Vickery, 25, Lincoln's-inn-fields
Sheppard, Shearman	Charles Shearman, Gray's-inn-square; Capes and Stuart, Field-court. Gray's-inn
Sims, John	George Carthew, Harleston
Smith, Edmund, B.A.	Joseph Warner Bromley, 1, South-square
Smith, James Nimmo	Robert Gillam, Birmingham
Southall, Thomas	William Laslett, Worcester
Stillwell, James	Charles Stuart Voules, New Windsor
Strong, Charles East	James Fawcett, 44, Jewin-street
Tandy, Thomas	Henry Hyde, 33, Ely-place, Holborn
Thomson, Benjamin James	John Whitley, Liverpool
Tozer, John Hellyer	John Chappell Tozer, Teignmouth
Tucker, John	John Steavenson, Sun-chambers, Threadneedle-street
Twigg, Francis	William Edward Twigg, Burslem; Benjamin Price, 17 Ironmonger-lane
Tytherleigh, Robert	Thomas Kennett, 2, Great Knight Rider-street, Doctors'-commons
Walter, Octavius Gardner	John Frederic Reeves, Taunton
Wansey, Arthur Henry	Henry Andrews Palmer, Bristol
Ward, William	Charles Bradford Passaman, Stafford; William Bower, Stafford
Warner, Algernon	Henry Masterman, Bucklersbury
Waterhouse, Thomas	John Mason, Bilston
Watson, Alfred	Robert Watson, 62, Moorgate-street
Webster, Henry	James Wilson, Sheffield
Wedlake, William Orme	Robert Cheere, 11, King's-bench-walk; Henry Brayley Wedlake, 10, King's-bench-walk
Were, Anthony Berwick	Frederick Dowding, Bath
Westhorp, George	Francis Newcombe London, Brentwood
Whish, George Thomas	William Henry Woodhouse, 5, New-square, Lincoln's-inn
Wigg, John Stone	George Herbert Kinderley, Lincoln's-inn
Wilkinson, William John	John Wilkinson, Hull
Wing, Thomas Twining	Thomas Wing, 1, Gray's-inn-square
Wood, Charles Paul	Gabriel Goldney, Chippenham
Wood, James	Robert Lesson, Nottingham; Charles Augustus Welby, Nottingham
Woolmer, Shirley Nettleton	Meaburn Tatham, 24, Lincoln's-inn-fields

MOOT POINTS.

SECOND TRANSPORTATION.

I have noticed in several cases at the Surrey Sessions lately, that a prisoner was sentenced for one offence to transportation for seven years, and then for another offence to a like transportation of seven years from the expiry of the first term. Is this correct? I remember the Secretary of State some 20 years ago, it is to be presumed on consulting the law officers of the Crown, held that a prisoner could not be so sentenced a second time, and that the second sentence was illegal and invalid, the prisoner after the first sentence being, as it were, dead in law.

THE PROSECUTOR'S ATTORNEY.

TRANSFER OF MORTGAGE.—WIFE'S DOWER.

In a mortgage of property by A., his wife joins to release her dower. Upon a transfer of that mortgage in which it is thought advisable to join the original mortgagor, is it necessary again to make his wife a party.

AN OLD SUBSCRIBER.

RIGHT OF A FEME COVERT TO DISPOSE OF PERSONALTY LEFT TO HER.

Can a married woman living apart from her husband bequeath personalty left to her, "her executors, administrators, and assigns, for her and their own absolute use and benefit," free from the marital rights of her husband?

G.

RAILWAY LIABILITY.

A horse by some means unknown gets out

of his field, and strays on to a turnpike road. A gate on the B. Railway, adjoining to the turnpike road being open and unfastened, the horse passed over that railway on to the C. Railway, which there adjoins to the B. Railway. A train on the C. Railway coming up

whilst the horse was on the line, killed it. Question. Which of the companies (if either) is liable and in what form of action, or is A. without remedy, in consequence of his own negligence in not preventing his horse from straying? L.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Follett v. Jefferys and others. Nov. 5, 6, 1849.

PRODUCTION OF DOCUMENTS.—SUIT IMPEACHING DEED.—SPECIFIC ALLEGATION OF FRAUD.

Held, that an order will not be made for the production of documents, &c., in a suit impeaching a deed for fraud, unless specific fraud is alleged, and that a general allegation of fraud is insufficient. The order for production made by the Vice-Chancellor, was therefore discharged, but leave was given to amend, and the motion directed to stand over.

This suit was instituted by the plaintiffs, as sequestrators on Mr. Taylor's estate, under a writ of this Court in *Cooper v. Taylor*, to impeach a deed of assignment of an annuity by Mr. Taylor to his wife, on the ground of fraud. The Vice-Chancellor of England, having made an order therein, directing Mrs. Taylor and her solicitor to produce the deed and certain letters and documents, including cases and opinions of counsel, and which related to the preparation of the deed, this appeal was now presented.

J. Parker and Freeling, for the appellants, contended, that these documents were privileged, being confidential between clients and their legal advisers before proceedings commenced, and those subsequent had been produced, citing *Greenough v. Gaskell*, 1 Myl. & K. 98; *Holmes v. Baddeley*, 6 Beav. 521; 1 Phill. 476; *Reece v. Trye*, 9 Beav. 316.

Rolt and Kinglake, for the respondents, urged that the documents should be produced in order to show the fraud alleged in the deed: *Sewyer v. Birchmore*, 3 Myl. & K. 572; *Desborough v. Rawlins*, 3 Myl. & Cr. 515; *Blenkinsopp v. Blenkinsopp*, 10 Beav. 277.

The Lord Chancellor said, that in order to take the case out of the general rule for protection of privileged communications, the precise nature of the fraud must be specifically defined, and their production could not be ordered upon a general allegation of fraud. The bill must therefore be amended, and the motion in the meantime stand over.

Clegg v. Fishwick. Nov. 7, 1849.

PARTNERSHIP.—INTEREST OF WIDOW AND ADMINISTRATRIX OF DECEASED PARTNER IN ASSETS.

Held, that the widow and administratrix of a

deceased partner and co-lessee of collieries, had sufficient interest to support a suit to realize the partnership assets; and the order of Vice-Chancellor Wigram for an injunction to restrain the defendants from proceeding in the management of the partnership business, and to appoint a receiver, was affirmed with costs.

THIS was an appeal from the Vice-Chancellor Wigram, who had granted an injunction to restrain the defendants from assigning or transferring their interest, under certain renewed leases, as partners in the Altham Coal Company's Collieries in Lancashire, without the consent of the plaintiff, or of the other co-partners in the undertaking, and from further interfering in the management of the business of the company, until the partnership concerns were wound up, and a receiver appointed; and a reference was directed to the Master (upon the defendant's refusing to pay into Court a certain proportion of the partnership profits) to appoint a receiver of one-sixth part of such profits, and the defendants to be at liberty to propose themselves.

The suit was instituted on behalf of the widow and administratrix of one of the lessees and partners, and sought to dissolve a partnership in the collieries, and to realize the assets for the benefit of the parties interested.

Wood and Elmsley, for the appellants, contended, that plaintiff had not sufficient interest in the property to entitle her to a decree, on the ground of an assignment made by her in 1839; the *Solicitor-General* and *Little* for the respondents.

The Lord Chancellor held, that the plaintiff was the proper and only person who could move in a suit to realize the assets, and that she was not denuded, as was contended, of all interest in the partnership property. The order of the Court below was therefore affirmed with costs.

Rubery v. Morris. Nov. 10, 1848, Nov. 8, 1849.

DISMISSAL OF BILL AGAINST PAUPER DEFENDANT.—DIVES COSTS.

Where a plaintiff dismisses his bill as against a defendant, held, affirming the decree of the Vice-Chancellor of England, that such defendant is entitled to dives costs, al-

though he may have obtained an order to defend in *forma pauperis*.

THIS was an appeal from the Vice-Chancellor of England, directing the Master to review his taxation and allow *three* costs to the defendant. The defendant had obtained an order to defend in *forma pauperis* to a bill filed by the plaintiff, who subsequently abandoned his suit against the defendant, and obtained an order dismissing his bill with pauper costs. The word pauper was afterwards omitted by order of the Vice-Chancellor, and a direction added to the Master to have regard to the fact that the defendant obtained an order to defend in *forma pauperis*. The Master having only certified for pauper costs, exceptions were taken, and allowed, and an order made for *three* costs.

W. M. James for the appellant; *Rolls* and *Bellis* for the respondent.

The Lord Chancellor, after taking time to consider, said, that where a party instituting a suit admits that he has no case against a defendant, although defending in *forma pauperis*, he ought to pay full costs. The decree of the Vice-Chancellor would therefore be affirmed.

Nov. 28.—*Chambre v. Siggers*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 28, 29.—*Coake v. Cholmondeley*—Decree affirmed of Vice-Chancellor of England with costs.

— 29.—*Cole v. Scott*—Appeal dismissed from Vice-Chancellor of England.

— 29, 30.—*Williams v. Powell*—Appeal from Vice-Chancellor of England allowed—Costs reserved.

— 30, Dec. 3.—*Duncan v. Lantley*—Demurrer allowed for want of equity, with leave to amend.

Dec. 3.—*Lassence v. Tierney*—Stand over.

— 3.—*Sanderson v. Trollope*—Stand over.

— 3.—*McClure v. Ripley*—Stand over.

— 3.—*Attorney-General v. Bony*—Order of Vice-Chancellor of England varied, and defendants ordered to produce bank receipt on Dec. 10, and permit plaintiff's agent to take copy.

— 3.—*In re Wexford, Waterford, and Valentia Railway Company, Ex parte Fisher*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 3.—*Mayor, &c., of Birmingham v. Mearns*—Order of Vice-Chancellor of England discharged.

— 3, 4.—*Malcolm v. Scott*—Part heard.

— 4.—*Taylor v. Taylor*—Appeal from Master of the Rolls dismissed with costs.

Rolls Court.

Zulueta and others v. Vinent and others. Nov. 9, 1849.

GENERAL DEMURRER.—BILL FOR AN ACCOUNT.—COSTS.

A general demurrer was overruled without costs to a bill filed for an account of defendants' dealings with a mining company in

Cuba and the plaintiffs, who were consignees of the company, and of the sale of the cargoes of two ships, and for an injunction to restrain defendants from proceeding at law for balances of account or the proceeds of such sale.

THIS was a demurrer by defendant, Antonio Vinent, for want of equity, multifariousness and want of parties to a bill filed by the Messrs. Zulueta, merchants in London, and consignees of the San José Mining Company of Cuba, against the defendant Vinent and others, for an account of their dealings with the company and the plaintiffs; and that if the balance were in favour of the plaintiffs, the net proceeds of the cargoes of two ships, the *Golconda* and *Goldsmith*, should be applied in payment of such balance in priority to the defendants. The bill also prayed an account of the sale of the cargoes, and an injunction to restrain Vinent from proceeding at law for the balances or cargoes.

Lloyd and Walcock, in support of the demurrer; *Turner and Shadwell* contra.

The Master of the Rolls overruled the demurrer, but without costs, on account of the mode in which the plaintiff's case was stated in the bill.

In re Collinge. Dec. 3, 1849.

SOLICITOR.—DELIVERY OF BILL OF COSTS NOTWITHSTANDING AGREEMENT.

On motion, an order was made for the delivery of a solicitor's bill, although an agreement as to the amount to be paid for costs had been entered into, and a sum of money had been received in satisfaction of the same.

Turner and Terrell moved for the delivery and taxation of a solicitor's bill of costs, notwithstanding that an agreement had been entered into for the payment of a certain sum in satisfaction of all costs, and that 362*l.* had been paid and received in satisfaction thereof.

Stevens, contra, contended that as there was an agreement for the sum to be paid for costs, his client having no further claim, had delivered over all papers, &c., and had not kept any account of the case.

The Master of the Rolls made an order for the delivery as prayed, but declined at present to order taxation.

Dec. 3.—*In re Williams and others*—Cur ad. vult.

— 3.—*Zulueta v. Vinent*—Injunction to restrain action at law on affidavit that it would be useless to defendants.

— 3.—*Byng v. Clarke*—Leave granted for extension of time for six weeks to defendant to prepare his answer.

— 3.—*Gregory v. Davies*—Motion refused for leave to exhibit interrogatories after publication of evidence passed.

— 4.—*Sadlens v. Laing and others*—Part heard.

Vice-Chancellor of England.

Sergrove v. Mayhew. Nov. 10, 1849.

**PLEADING.—PARTIES.—ASSIGNEES OF
BANKRUPT DEPENDANT.**

A plea for want of parties was overruled with costs, where one of the defendants became a bankrupt after the filing of the bill.

Semble, the assignees should be made parties by supplemental bill.

AFTER the bill in this case was filed, one of the defendants became bankrupt, and a plea was put in for want of parties.

Glaspe, in support of the plea, contended that the bankrupt's assignees should be made parties, and that therefore the bill was defective, and no decree could be made, citing, *Turner v. Robinson*, 1 Sim. & S. 3.

Chichester, contra.

The Vice-Chancellor said, that as the bankruptcy took place after the bill was filed, it was impossible to have made the assignees parties to the original bill, and overruled the plea with costs.

Dec. 3.—*Attorney-General v. Browne's Hospital*—Judgment on construction of letters patent.

—3.—*Wright v. Barnwell*—Executor held debtor to the Crown for legacy duty retained but not paid.

—3.—*North Staffordshire Railway Company v. Glover*—Injunction modified so as not to effect the legal powers of the company.

—3.—*King of the Two Sicilies v. Peninsular and Oriental Steam Packet Company*—Special injunction to restrain delivery up of steam ship.

—3.—*Jones v. Brandon*—Bill dismissed with costs.

—4.—*Ashburnham v. Ashburnham*—Judgment on construction of marriage settlement and will.

—4.—*Elmhurst v. Spencer*—Injunction to restrain defendants from polluting stream, upon plaintiff undertaking to bring action.

—4.—*Hughes v. Morris*—Injunction to restrain defendants from parting with certain shares in vessel on plaintiff's paying into Court balance due.

Vice-Chancellor Knight Bruce.

Barnett v. Dewhurst. Nov. 12, 13, 1849.

**COMPOSITION DEED.—REFERENCE AS TO
DEFENDANT'S LIABILITY.—SUFFICIENCY
OF CONTRACT.**

Where the evidence was insufficient to establish the existence of a contract entitling a banking company to enforce the terms of a composition deed entered into by the defendant to guarantee his brother's creditors eight shillings in the pound, a reference was directed upon this question, with power to examine vivâ voce.

The plaintiff filed this bill as public officer of the Halifax Joint-Stock Banking Company;

against the defendant, who had undertaken to guarantee the creditors of his brother eight shillings in the pound, under a composition deed. The defendant had issued certain promissory notes to the amount of 788*l.* 13*s.* 10*d.* for a sum due to the company, and which was now sought to be recovered.

Russell and Follett, for the plaintiff, cited *Spottiswoode v. Stockdale*, G. Coop. 102; *Ex parte Sadler*, 15 Ves. 52.

Swanston and Wilcock, for the defendant, contended that the banking company had not acceded to the terms under the composition deed, and had also retained certain bills drawn by the brother, citing, *Buck v. Shippam*, 1 Phill. 694; *Johanson v. Kershaw*, 1 De G. & S. 260.

The Vice-Chancellor ordered a reference to the Master, with power to examine witnesses, *vivâ voce*, as the evidence was insufficient to establish such a contract as would entitle the company to a decree against the defendant.

Ex parte Spicer, in *re Matthias*. Nov. 7, 1849.

(In Bankruptcy.)

**BANKRUPT.—CERTIFICATE.—PETITION TO
RECALL.—BANKRUPTCY CONSOLIDATION ACT.**

Where the bankrupt who acts a solicitor, had been authorised by the executors of his deceased partner, to realise and pay to their account at the bankers the proceeds of a policy of insurance on the life of the deceased; and the bankrupt paid it to his own private account: Held, that such was not the conduct of the bankrupt "as a trader," and a petition to stay or recall the certificate was refused, but without costs.

Semble, Where the order of the Commissioner is made before 11th Oct., at which time the 12 & 13 Vict. c. 106, came into operation, any petition presented therewith will be dealt with under the law existing before that act.

THIS petition was presented by the executors of Mr. James, who at his death, in 1846, was in partnership as attorney and solicitor with the bankrupt, George Matthias, of Glastonbury, to stay or recall the certificate, on the ground that the bankrupt had misapplied a sum of 1,500*l.*, the produce of a policy of insurance on Mr. James's life. It appeared that the executors had employed the bankrupt to realize the policy and to pay the produce to their account as their bankers, but he had paid it to his own private account. The executors then brought their action to recover the amount, to which the bankrupt pleaded, and obliged them to go to trial; he had also filed his bill for an injunction to stay execution. He became bankrupt in 1848, and Mr. Serjeant Stephens, in Sept. last, allowed his certificate, on the ground that the alleged misconduct was not "as a trader."

Bacon and Schomberg for the petition; *Russell* for the bankrupt.

The Vice-Chancellor said, the petition was to be dealt with according to the state of the law before the 12 & 13 Vict. c. 106. The respondent was made bankrupt as a scrivener,

"receiving other men's moneys, or estates, into his trust and custody," but the sum in question was not money received into his trust or custody as a scrivener. The petition must therefore be dismissed, but without costs.

Dec. 3.—*Farebrother v. Beale*—Stand over.

— 3, 4.—*Shrewsbury and Chester Railway Company v. Chester and Holyhead Railway Company*—Part heard.

Vice-Chancellor Wigram.

Davidson v. Proctor. Nov. 12, 13, 1849.

WILL.—CONSTRUCTION.—APPOINTMENT.

A married woman, under a power in her marriage settlement, devised lands subject to the payment of a sum of money to be paid 12 months after her husband's death amongst the relations of her late mother as he should by will appoint, and in default thereof, according to the statute of distributions. The husband not having made a valid appointment, held, that the next of kin to the mother living at his death were entitled to the fund.

THIS suit was instituted for the administration of the estate of a testatrix, who devised lands under a power contained in her marriage settlement to a devisee, subject to the payment of a sum of 1,500*l.* within 12 months after her husband's death, to her late mother's relatives in such manner as her husband should by will appoint, or in default thereof to be distributed according to the statute of distributions. The husband made an invalid exercise of the power.

The Solicitor-General, Kenyon Parker, Wood, J. T. Humphrey, Amphlett, Buxton, Green, and Woodhouse, appeared for the several parties.

The Vice-Chancellor said, that the words used by the testatrix referring to the statute, pointed to distribution, and that the gift in default of appointment was contingent, and was only a direction to pay. The relations of the testatrix's mother living at the death of the donee of the power were therefore entitled to the fund.

Dec. 3.—*Rigby v. Great Western Railway Company*—Reference to the Master as to loss sustained by the plaintiff—costs reserved.

— 4.—*Evans v. Protheroe*—Cur. ad. vult.

— 4.—*Griffiths v. Lunell, Griffiths v. Ricketts*—Part heard.

Queen's Bench.

Jones v. Alexander and others. Nov. 10, 1849.

NEW TRIAL.—RIGHT TO REPLY.

A rule nisi was granted for a new trial where the jury found their verdict before the summing up of the judge, and without allowing the plaintiff's counsel time to reply.

THIS was an action in trespass for entering the plaintiff's house and for false imprisonment in a room therein. At the trial before Mr. Justice Wightman, at the last Sittings, it appeared that the plaintiff, who lived at Cam-

berwell, was removing his goods when the defendants entered to levy for rates or taxes. The defendant's counsel, after the plaintiff's case was closed, addressed the jury, stating he had numerous witnesses to call, but concluded without calling them. The jury without hearing the summing up, found a verdict for the defendant.

Wilde now moved for a new trial on the ground that the verdict was against evidence, and that the plaintiff's counsel was not allowed to reply.

The Court granted a rule.

In *Humphreys*. Nov. 22, 1849.

WELSH ATTORNEY.—ATTACHMENT FOR CONTEMPT.

Held, that a Welsh attorney who had only signed the shilling roll under the 11 Geo. 4, and 1 Wm. 4, c. 70, was liable to an attachment for contempt for prosecuting an action in the Court of Queen's Bench against a defendant residing out of the jurisdiction of the Welsh Great Sessions.

RICHARD Humphreys, an attorney of St. Asaph, in Wales, and being only qualified to act by virtue of the 11 Geo. 4, and 1 Wm. 4, c. 70, s. 16, in cases within the jurisdiction of the Great Sessions, had acted through his London agents as the attorney on the record for the plaintiff in an action by one Edwards and wife against Mr. Williams, a solicitor of the Temple, to recover certain title deeds relating to the sale of an estate in Flintshire, in which Mr. Humphreys was concerned, and a verdict was obtained with 12*4*l.** costs. A rule nisi for an attachment for contempt having been obtained against Mr. Humphreys, Martin and Pulling showed cause against the rule, citing, *Res. v. Borron*, 3 B. & Ald. 432; *Matthews v. Royle*, 6 Moore, 70; *Hulls v. Lea*, 10 Q. B. 940; *Esparte Davies*, 5 Q. B. 564.

Attorney-General, Welsby, and Willes, supported the rule.

The Court said, that as Mr. Humphreys had not been admitted an attorney of this Court, or of any Court at Westminster, under s. 17 of the 11 Geo. 4, and 1 Wm. 4, c. 70, he was, in cases where the defendant resided out of Wales, in the same condition as a person who had not served under articles,—and as such was liable to an attachment for contempt of Court, under s. 35 of the 6 & 7 Vict. c. 73. The rule must therefore be made absolute, but the attachment will lie in the Master's office until the 5th day of Hilary Term next, and will not be enforced, upon Mr. Humphreys procuring himself to be duly admitted before that time, paying the costs of this application.

Nov. 28.—*Regina v. Guardians of Cornwall and Anglesea Union*—Rule absolute to quash orders of sessions disallowing maintenance of lunatic pauper.

— 29, Dec. 4.—*Regina v. Smith and others*—Stand over.

Dec. 4.—*Morrell v. Wooten*—Rule absolute for new trial.

— 4.—*Keene v. Ward*—*Cur. ad. vult.*

Queen's Bench Practice Court.

Regina v. Inhabitants of St. Pancras. Nov. 3, 1849.

ELECTION OF PAVING COMMISSIONERS UNDER LOCAL ACT.—VALIDITY OF.

Quære, whether the election of Paving Commissioners under a local act is valid, where under the act the election was to take place on June 24, in every year, and that day happening on a Sunday, the election is nevertheless made?

By a local act of parliament, the inhabitants of the parish of St. Pancras are directed to meet on the 24th of June in each year, and elect 31 persons as Commissioners of Paving. They had accordingly been summoned on that day, and had elected the Commissioners. The 24th of June was on a Sunday.

Cross now moved for a mandamus calling on the inhabitants to proceed to elect 31 commissioners, in pursuance of their local act,—the former election, having taken place on a Sunday, being void.

The Court granted the rule.

Common Pleas.

Lewis v. Campbell. May 23, Nov. 21, 1849.

MONEY PAID TO DEFENDANT'S USE.—ACTION AT LAW.

Where the plaintiff's agents had, upon presentation of a cheque for 112l. 16s. 6d., the amount of a debt due by him to A., refused to pay and retained the sum on account of a debt due from A. to B., for whom they were also agents, and B. agreed to indemnify the plaintiff against A.'s claim, and A. had brought an action against the plaintiff which B. defended by plaintiff's consent, but to satisfy the judgment in which the plaintiff paid 160l. 13s. 6d., Held, that plaintiff was entitled to recover the latter amount from B. as money paid to B.'s use.

THE plaintiff being indebted in the sum of 112l. 16s. 6d. to one Duke, directed him to obtain payment thereof from his agents, M'Donald and M'Queen, who, however, refused to pay the same, and retained the amount in part payment of a debt of 350l. due from Duke to Mrs. Campbell, the present defendant, and on her behalf undertook to indemnify the plaintiff in respect of such payment. The defendant accordingly defended an action brought by Duke against the plaintiff, in the plaintiff's name and by his consent, but the defence proving unsuccessful, the plaintiff *Lewis* paid Duke the sum of 160l. 13s. 6d., for which judgment was obtained, and then brought the present action for money paid, money had and received, and on an account stated. On the trial before *Wilde, L. C. J.*, at the London Sitting after

Hilary Term, 1848, a verdict was taken for the plaintiff for 160l. 13s. 6d., with leave reserved to move to enter a nonsuit or to reduce to 112l. 16s. 6d. A rule nisi having accordingly been obtained,

Talfourd, Q. S., and *M. Smith* showed cause against the rule, which was supported by *Byles, S. L.*, and *C. Pollock*, citing *Spencer v. Perry*, 3 A. & E. 331; 4 M. & N. 770; *Ewall v. Partridge*, 8 T. R. 308.

Cur. ad. vult.

The Court said, the defendant was bound by her contract to indemnify the plaintiff against any claim made by Duke, and by defending the action brought against the plaintiff by him had impliedly authorized the plaintiff to satisfy the judgment obtained therein, and the plaintiff could therefore recover the amount as money paid to the defendant's use: *Hovess v. Martin*, 1 Esp. 162; *Brittain v. Lloyd*, 14 M. & W. 762. The rule must therefore be discharged.

Nov. 30.—*Harcourt v. Dickson, in re Garrett*—Rule absolute to strike attorney off the Rolls.

— 30.—*Doe dem. Rogers v. Price*—Rule absolute to enter nonsuit.

— 30.—*Capell, app., Overseers of Aston, resp.*; *Burton, app., Overseers of Aston, resp.*—On demurrer, judgment for plaintiff.

— 30.—*Munroe and others v. Bordier and others*—On special demurrer, judgment for plaintiffs.

— 30.—*Russell v. Briant*—Rule absolute to enter nonsuit.

— 30.—*Smith v. Hull Glass Company*—Rule absolute for new trial.

Dec. 4.—*Warren v. Peabody*—Rule discharged to set aside verdict.

— 4.—*Viner v. Arnold*—Rule absolute to enter verdict for plaintiff on 2nd plea.

— 4.—*Russell v. Briant*—Rule absolute for new trial.

Exchequer.

In re Willis. Trinity Term, Nov. 26, 1849.

GUARANTEE.—PROOF UNDER BANKRUPTCY.

Held, that a guarantee of the payment of a debt on a certain contingency was provable under the 6 G. 4, c. 16, although no claim or demand had arisen on the guarantee at the time of the bankruptcy.

THIS was a case by order of the Vice-Chancellor Knight Bruce, whether proof could be made under the bankruptcy of W. Willis, of a guarantee given to Messrs. Brooks and Co. in March, 1847, by the bankrupt, for the payment of certain bills by a third party. Messrs. Brooks and Co., it appeared, had required security from certain parties to whom goods to the value of about 3,000l. were about to be supplied, that the bills of exchange at 18 months' date given in payment would be paid at maturity. The bankrupt, for a considera-

tion of one per cent., gave the required guarantee, but was declared a bankrupt in October, 1847, and the first of the bills due on 1st January, 1848, had been dishonoured and remained unpaid, and Messrs. Brooks proposed to prove for the amount under the bankruptcy.

Our. and. vult.

The Court said, that the guarantee was given for the payment of a debt on a certain contingency, and was proveable under the bankruptcy, according to *Ex parte Myers*, 2 Deac. & Ch. 251; and certified to that effect to the Vice-Chancellor Knight Bruce.

Dec. 1.—*Belgrave v. Belgrave and others*—On special case, judgment on construction of will.

— 3.—*Skelton and others v. Bushby and others*—On special demurrer, judgment for the plaintiffs.

— 3.—*Somrisbrook v. Kennard and another*—Rule discharged to set aside verdict and for new trial.

— 4, 5.—*Attorney-Gen. v. Shillibeer*—Rule absolute on Queen's Remembrancer to review his taxation so far as related to the costs of witnesses not examined on the counts of an indictment for penalties under the 2 & 3 W. 4, c. 120, s. 101, on which the Crown was successful; but discharged on the objection of allowance of costs of the solicitor of Inland Revenue.

— 4.—*Shepherd and others v. Duncom*—On general demurrer, amendment within a week or judgment for the defendant.

Court of Exchequer Chamber.

Nov. 28.—*Weedon v. Woodbridge*—Cur. ad. vult.

— 28.—*Gregory v. Reginam*—Stand over.

— 29, 30.—*Grey v. Friar*—Cur. ad. vult.

— 30.—*Merryweather v. Turner*—Judgment of the Court of Common Pleas affirmed.

Dec. 1.—*Moss v. Gurnood*—Judgment of the Court of Exchequer affirmed.

— 1.—*Rennie and another v. Wyman*—Judgment of the Court of Exchequer affirmed.

Court of Bankruptcy.

(Coram Mr. Commissioner Goulburn.)

In re Sheward. Nov. 10, 1849.

BANKRUPT CONSOLIDATION ACT. — BOND BY TRADER.

Semble, it is not discretionary on the Court to dispense with the bond required to be entered into by the debtor, under the 12 & 13 Vict. c. 106, s. 79.

THIS was an application under the 12 & 13 Vict. c. 106, s. 79, for the Commissioner to require a trader summoned under section 78, to enter into a bond in such sum and with such two sufficient sureties as the Court should approve of, to pay such sum or sums as should be recovered, together with such costs as should be given in any action to be brought for the recovery of the same, alleged to be due in the affidavit of debt. The trader made a deposition that he had a good defence upon the merits to the demand.

Linklater for the summoning creditor; *Lucas* for the debtor.

The Commissioner said, that the legislature intended to prevent a creditor being defeated by the mere oath of the debtor's belief of having a good defence upon the merits to his demand, and the Court was therefore empowered to require a bond to be given.

Upon an application being then made for an adjournment, and opposed on behalf of the creditor, the time was enlarged for a week for entering into the bond, and the costs incident to or attendant upon the affidavit and summons, were ordered to be costs in the cause, under section 85.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

POOR LAW and MAGISTRATES' CASES.

ADJOURNED SESSIONS.

See Appeal, 3.

APPEAL.

1. *Grounds of objection.*—Under a statement, as ground of objection to an order of removal, that the pauper does not appear by the examination to have been "actually chargeable to your said parish" where the order was made, the appellants cannot object that the pauper does not appear by the examinations to have been resident in the removing parish at the time. *Regina v. Inhabitants of Watford*, 9 Q. B. 696.

2. *Resisting appeal.*—A pauper, who was a married woman, and whose husband had deserted her, was removed, under an order of re-

moval, to the place of her maiden settlement, on the 26th of September, 1846. An appeal was entered and respited at the Michaelmas Sessions. The appellant township, on the 1st December following, obtained a warrant for the arrest of the husband, who was not apprehended till the 24th of that month, and, consequently, too late to give notice of appeal for the Epiphany Sessions. At those sessions, however, the appellant parish appeared and asked to have the appeal respited, on a statement of those facts, to the Easter Sessions. The Epiphany Sessions having called the respondents before them, and heard their objection, namely, that no notice of appeal having been given, the sessions had no power to respite the case; and even if they had, they would not consider the circumstances such as to call upon them to do so.

session it made an order respiting the appeal to the Easter Sessions, on payment of the costs of the day by the appellants, without prejudice to the objection of want of notice of appeal. A valid notice of appeal was given for the Easter Sessions, and on the case being called on, the objection was renewed, that no notice had been given for the Epiphany Sessions; and the sessions decided that the objection was fatal: *Held*, that the Epiphany Sessions had clearly the power to respite, if in their discretion they thought fit; and that they must be taken to have exercised their discretion, reserving the question of their power; that the Easter Sessions had therefore decided wrongly; and that a mandamus would lie to the sessions to enter continuance and hear the appeal. *Regina v. Justices of Lancashire*, 5 D. & L. 264.

3. *Adjourned Sessions*.—The 7 & 8 Vict. c. 71, s. 2, (Criminal Justice [Middlesex] Act,) enacts, that the adjourned sessions in Middlesex "shall be general sessions of the peace," and "shall have power to try and determine all appeals, and all other powers which" "belong to the general quarter sessions." *Held*, that the jurisdiction thus given was optional only; and that the putative father was not bound to appeal to those sessions, but might wait and appeal to the general quarter sessions. *Reg. v. Justices of Middlesex*, 5 D. & L. 580.

See Bastard, 2; *Order of removal*, 2, 3, 4; *Settlement*.

WASTARD.

1. *Maintenance*.—*Certiorari*.—An order in bastardy for the payment of expenses of the maintenance of an illegitimate child, under the 7 & 8 Vict. c. 101, and the 8 & 9 Vict. c. 10, whether the defendant appears in person or by attorney, to answer the complaint of the woman before the justices, should state, on the face of it, that the evidence was given "in the presence and hearing" of the defendant, or of his attorney, as the case may be; and if, *after appearance*, there is any special reason for omitting that statement, it should be suggested on the face of the order.

Where in an order drawn upon a printed form under the 8 & 9 Vict. c. 10, it was stated that the putative father appeared before the justices in pursuance of the summons; but the words "in the presence and hearing of the said," &c., (after the statement of the proof being given and the evidence received,) were struck out: *Held*, on motion for a certiorari, that the order was bad, and that the Court would not presume, those words being struck out, that the proof and evidence were nevertheless received and given in the presence and hearing of the putative father, or of his attorney. *Reg. v. Duke of Grafton*, 5 D. & L. 568.

Cases cited in the judgment: *Rex v. Luffe*, 8 East, 193; *Regina v. Shipperbottom*, 16 Law J., M. C., 113.

2. *Appeal*.—*Notice*.—On an appeal to the quarter sessions, by the putative father, against an order of maintenance, the 8 & 9 Vict. c. 10, s. 6, requires the justices, "on the trial of any

such appeal," to "hear the evidence of the mother." *Held*, that the proof that the notice of appeal had been given to her, was part of "the trial" of the appeal; and that, therefore, she might be called as a witness to prove that fact. *Reg. v. Justices of Middlesex*, 5 D. & L. 580.

3. *Maintenance*.—*Notice of appeal*.—An order of maintenance, under the 7 & 8 Vict. c. 101, was made at 5 o'clock in the afternoon of Saturday. At 10 o'clock on Monday morning, notice of appeal was served on the mother: *Held*, that the notice was given in sufficient time, as the 24 hours prescribed by the 7 & 8 Vict. c. 101, s. 4, within which notice of appeal is to be given, must be reckoned exclusive of Sunday. *Reg. v. Justices of Middlesex*, 5 D. & L. 580.

BIRTH SETTLEMENT.

Birth confers a settlement without a residence of 40 days. *Regina v. Inhabitants of Walford*, 9 Q. B. 626.

CERTIORARI.

Notice.—*Costs*.—An appeal having been called on at the sessions, and the appellants not appearing, (having served a notice of abandonment of the appeal upon the respondents,) the sessions, at the instance of the respondents, made an order in the following form: "Survey, to wit. At the general quarter sessions of the peace of our Sovereign Lady the Queen, holden at St. Mary, Newington, on Tuesday," &c. After reciting, that at the last general quarter sessions of the peace holden in and for the County of Surrey, appeal was then made unto this Court," &c., and that it was respited "until the next general quarter sessions of the peace to be holden in and for the said County of Surrey;" "Now," &c., "it is ordered by this Court," &c., that the appeal be dismissed, and "it is further ordered, that the said appellants do forthwith pay to the said respondents the sum of 115*l* costs."

Held, on motion for certiorari, that it was not necessary that notice should have been given to the appellants that more than nominal costs would be applied for; although it was stated upon affidavit that it was the practice at the sessions not to give more, unless under very particular circumstances.

Held also, that it sufficiently appeared to be a quarter sessions holden "in and for" the county. *Held* also, that it was sufficiently shown, that the costs awarded, were costs in respect of the appeal. *Reporte London, Brighton, and South Coast Railway Co.*, 5 D. L. 597.

See Bastard, 1.

COSTS.

See Certiorari; Mandamus, 1, 2.

LUNATIC PAUPER.

1. *Settlement*.—On appeal against an order for payment of expenses and maintenance under 8 & 9 Vict. c. 126, s. 62, the settlement of the pauper lunatic may be contested. *Reporte Monkleigh*, 5 D. & L. 404.

2. *Notice*.—No notice of an application for an order, adjudicating the settlement of a lunatic

tic pauper, under the 8 & 9 Vict. c. 126, s. 58, need be given to the parish, on whom it is made. *Ex parte Monkleigh*, 5 D. & L. 404.

And see *Order of Removal*, 2.

MAINTENANCE.

See *Bastard*, 1, 3.

MANDAMUS.

1. *Costs*.—When a party unsuccessfully opposes a rule for a mandamus to set right the sessions, who have wrongly decided a matter in his favour, he will in general be made to pay the costs of the mandamus, unless, perhaps, the matter is wrongly decided by the Court itself, uninfluenced by any improper objection on his part. On an application for a rule or the payment of such costs, it is not necessary that a demand of the costs from the opposite party should have been previously made. *Regina v. Justices of Cheshire*, 5 D. & L. 426.

2. *Sessions*.—*Costs*.—A party, who succeeds at the sessions upon an objection which turns out to be ill-founded, and resists an application for a mandamus to correct the error, by showing cause against it, is within the general rules for the payment of costs by the unsuccessful party; subject to exceptions which the Court may make in particular cases in the exercise of their general jurisdiction over the costs. *Reg. v. Justices of Cumberland*, 5 D. & L. 430; *Reg. v. Justices of Lancashire*, ib.

Cases cited in the judgment: *Regina v. Justices of Surrey*, 9 Q. B. 37; *Regina v. Justices of London*, 9 Q. B. 41.

NOTICE OF APPEAL.

See *Bastard*, 2, 3; *Certiorari*; *Lunatic Pauper*.

ORDER OF REMOVAL.

1. *Complaint by overseers*.—An order of removal stated that it was made on the complaint of the overseers of the removing parish, not mentioning the churchwardens: *Held*, sufficient. *Regina v. Inhabitants of Watford*, 9 Q. B. 626.

2. *Not quashed on formal grounds*.—*Semble*, per Lord Denman, C. J., Coleridge, and Wightman, JJ., that, under statute 9 Geo. 4, c. 40, the quashing of an order of justices as to settlement and maintenance of a lunatic pauper, though not on formal grounds, is not necessarily conclusive, but that, by section 42, a subsequent order, made on new inquiry, may be valid. *Regina v. Inhabitants of St. Peter's, Droghda*, 9 Q. B. 686.

3. *Quashed "without any special entry"*.—*Grounds of appeal*.—Where appellants against an order of removal have delivered grounds of appeal containing objections of form, and respondents, having given notice of abandonment, apply to have their own order quashed, such quashing is not conclusive, though there be, in the grounds of appeal, other objections going to the merits, and though the notice does not specify the grounds of abandonment. Therefore, where, under such circumstances, the sessions had quashed the order, with an entry, "Order quashed, without special entry, as the Court have no evidence before them to

make such entry." *Held*, that a subsequent Court of Quarter Sessions, on appeal against a new order bringing the same settlement into question, might properly decide that the quashing was not conclusive. *Regina v. Inhabitants of Landkey*, 9 Q. B. 905.

4. *Quashed without specifying grounds*.—*Appeal against subsequent order*.—*Form and substance*.—An order of removal, and an order of sessions confirming it, were quashed by this Court, on a case stated for their opinion, because the examination, relied upon as showing a settlement by renting a tenement, stated that "rent," and not "the rent" was paid. The respondents again removed the paupers to the appellant parish, which appealed again, relying upon the former judgment in Queen's Bench, as an estoppel. On a case stated by the sessions, confirming the latter order, subject to the opinion of this Court, it appeared that, in the former case, the sessions had stated that, if this Court held the objection good, the order of removal was to be quashed, "for deficiency in the examination." It appeared also that the judgment of this Court was, simply, that the orders should "be severally quashed." *Held*:

1. That the respondents were not estopped by the former judgment in Queen's Bench; but might have shown (if they had been able) that it proceeded on matter of form only.

2. That the appellants were at liberty, if necessary, to show by evidence, (which the sessions had not allowed them to do,) that the judgment turned on matter of substance.

3. That the objection, admitted on the present case to have been as above stated, was substantial and valid.

4. That the quashing of the former orders by this Court, being general in terms, and not explained by evidence, must be deemed as quashing on the merits.

5. That, if the provisional judgment of the sessions in the first special case could be looked to, the words "for deficiency of the examination," might have been explained by evidence, or by a special entry, to mean a deficiency merely formal; but that, unexplained, they must be taken to import a substantial defect. *Regina v. Inhabitants of Leeds*, 9 Q. B. 910.

OVERSEERS.

Inspection of appointment.—This Court refused a mandamus commanding overseers to permit a rate-payer to inspect their appointment by the justices, he deposing that he believed one of the overseers was not a substantial householder or a fit person to be overseer; that, as he, the applicant, was advised, the appointment was bad in law; and that he was desirous of bringing it before the Court, but could not do so without inspecting the appointment, which he had endeavoured without success to obtain. *Regina v. Harrison*, 9 Q. B. 794.

See *Order of Removal*.

RESIDENCE OF PAUPER.

A statement, in a ground of appeal, that the pauper served the office of assessor and collec-

tor of the land-tax and assessed taxes for certain specified years, "during which years he was an inhabitant and resident" in C., imports that he inhabited and resided in C., during the whole of those years. *Regina v. Inhabitants of Anderson*, 9 Q. B. 663.

SETTLEMENT.

Serving public office.—Ground of appeal.—The Court will take notice that the offices of assessor and collector of the land-tax and assessed taxes are "public annual" offices, within the meaning of statute 3 Wm. & M. c. 11, s. 6.

A statement, in a ground of appeal, that the pauper "served" the offices in question, "to which said offices he was duly and legally ap-

pointed," imports that he served those offices "for himself and on his own account" within the meaning of statute 3 W. & M. c. 11, s. 6. *Regina v. Inhabitants of Anderson*, 9 Q. B. 663. See *Birth Settlement*; *Lunatic Pauper*, 1; *Widow*.

WIDOW.

Settlement.—Where an order of removal described the pauper as a widow, and the examination mentioned the name of her deceased husband, but did not show whether he had any settlement, nor that any inquiries had been made on the subject: *Held*, that she might be removed to the place of her birth-settlement. *Regina v. Watford*, 9 Q. B. 626.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Sittings after Michaelmas Term, 1849.

AT LINCOLN'S INN.

Barth Chancellor.

APPEALS.

Hil. Term M'Intosh v. Great Western Railway Co., appeal.

Dec. 4, Attorney-Gen. v. Jones, cause by order.

Ditto, Rackham v. Siddall, appeal.

Duncan v. Luntley, appeal.

Melcolm v. Scott, appeal.

Boothby v. Boothby, appeal.

Fuller v. Bennett, appeal.

Watson v. Masters, appeal.

Dodson v. Powell, appeal.

Hawkins v. Jackson, appeal.

Cowell v. Watts, Watts v. Cowell, appeal.

Andrew v. Andrew, appeal.

Marks v. Solomons, appeal.

Purchase v. Shullis, appeal.

Attorney-General v. Gibbs, Rock v. Ditto, appl.
Bagshaw v. East India Railway, Ditto v. Ditto.
2 appeals.

Masters v. Scales, re-hearing.

Loader v. Clarke, appeal.

Miller v. Priddon, appeal.

Cross v. Sprigg, appeal.

Sanderson v. Cockermonke and Workington Rail.
Company, appeal.

Dawson v. Brinckman, appeal.

Bagshaw v. M'Niel, appeal.

Attorney-Gen. v. Corporation of London, appeal.

Padbury v. Clarke, appeal.

Attorney-General v. Pilgrim, appeal.

Coleman v. Mellersh, appeal.

Adams v. Blackwall, appeal.

Hirst v. Tolson, appeal.

Tomlinson v. Troughton, Haydock v. Tomlinson,
appeal.

Weaver v. Grant, appeal.

Waring v. the Manchester, Sheffield, and Lin-
colnshire Railway Company, appeal.

Coleman v. Mellersh, appeal.

Hughes v. Williams, appeal.

Walah v. Trevanion, 4 causes, appeal.

Price v. Berrington, 3 causes, appeal.

Williamson v. Gordon, appeal.

Benyon v. Nettlefold, appeal.

Hutchinson v. Tysheune, appeal.

Short v. Mansier, appeal.

Roberts v. Jones, appeal.

S. O., Lassence v. Tierney, appeal.

Fowler v. Reynal, appeal.

Caton v. Ridout, appeal.

Weaver v. Grant, appeal.

Miller v. Huddleston, appeal.

Price v. Berrington, Price v. Fothergill, appeal.

Wilkinson v. Godson, appeal.

Yates v. Maddan, appeal.

Innes v. Sayer, appeal.

Mensies v. Connor, appeal.

Ditto v. Ditto, ditto.

Hickling v. Boyer, appeal.

Rowland v. Witherden, appeal.

Myers v. Perigal, appeal.

Pearson v. Goulden, appeal.

Pearson v. Beck, appeal.

Pearson v. Hulme, appeal.

Pearson v. Oldham, appeal.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Salmon v. Dean, plen.

St. John v. Phelps, plea.

Watts v. Russell, demurrer.

To be mentioned, Hobson v. M'Kenzie.

Ditto, Barnard v. Earl of Liverpool.

Ditto, Roberts v. Roberts, further dirs. and costs.

Ditto, Bell v. Hoyes.

Ditto, Wright v. Barnewall, fur. dirs.

Dec. 7, Knight v. Cox, ditto and petn.

Gates v. Lord Dunboync, Vaughan v. Vanderstagen.

Hilary Term, Parkyn v. Cape.

Stammers v. Halliday, fur. dirs. and costs.

Ditto v. Sturges, cause by order.

Deare v. Bates, fur. dirs. and costs.

Fairhurst v. Mulcolm, exons.

Freeman v. Norton.

Mason (pauper) v. Wakeman.

Dec. 12, Bell v. Rea, Rea v. Bell.

Holbeck (pauper) v. Holbeck.

Attorney-General v. Adams.

Bignold v. Yeo.

Spilling v. Sims, fur. dirs. & costs.

A. Fletcher v. Moore, ditto.

Branch v. Bank of England, ditto.

Bird v. Smith.

Enderby v. Gunter.

Wilkinson v. Hartley, exons. and fur. dirs.

Jones v. Parry.

Green v. Wallis.

Blackwell v. Harpell.
Mayor of Bewick v. Murray.
Dec. 11, Scarsbrook v. Skelmerdale.
Metzger v. Ramadan.
Langdon v. Woods, fur. dirs. and costs.
Gardner v. Williams.
Devey v. Fisher.
Roe v. Gooheridge, per confesso.
Bryant v. Bryant, fur. dirs. and costs.
Sargison v. Sargison, ditto.
Easton v. Greaves, Foster v. Foster.
Watson v. Bonthby.
Wright v. Bell.
Trant v. Daffall, fur. dirs.
Shaphard v. Hancock.
Byrne v. Earl of Ranfurly.
Porter v. Simson.
Peet v. Hague, 4 causes.
Paterson v. Scott, fur. dirs. and costs.
Spruce v. Perren, ditto.
Savage v. Savage, exons, ditto.
Cooper v. France.
Forbes v. Herring.
Hatherell v. Baylis.
Hardcastle v. Methley.
Onyon v. Washbourn.
Savage v. Savage, exons. and fur. dirs.
Smith v. Pollett.
Seagrave v. Pope.
Webster v. Parratt.
Staines v. Bourne.
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Curtis v. Cotton.
Baydon v. Watson, 4 causes, fur. dirs. and costs.
Knight v. Major.
Charlton v. Brittlebank.
Harries v. Rainbott.
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Haynes v. Barton.
Richards v. Paterson, fur. dirs.
Chapman v. Grieve.
Ashton v. Jones.
Beebe v. Stirton, fur. dirs. and costs.
Lewin v. Kellett.
Heathcote v. Wyndham.
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Ellis Fletcher v. Moore.
Short, Duncan v. Marker.
Stamp v. Stamp.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Farebrother v. Beale, demurrer.
Easter Term, Stanley v. Bulkeley.
Mendes v. Brandon.
S. O., Caton v. Rideout, fur. dirs. and costs.
Gore v. Bowser.
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Welford v. Gibbon.
Smitheman v. Spicer.
Lett v. Randall.
Pemberton v. French.
Bushill v. Costeker.
Tyler v. Newcombe.
Lea v. Grundy.
Grove v. Meredith.
White v. Pegg.
Tyler v. Newcombe, Tyler v. Valpy.
Dec. 8, Froggatt v. Wardell.

Ditto, Gundry v. Gundry.
Ditto, Dyer v. Ayling, 2 causes.
Dec. 18, Cant v. Hodges.
Ditto, Marston v. Blandell.
Ditto, Southern v. Wellston, 2 causes.
Davies v. Davies.
Coleman v. Mister, Coleman v. Thomas, fur. dirs. and costs.
S. O., Faithful v. Gillett, fur. dirs.
Dec. 14, Atkinson v. Lion.
Dec. 20, Read v. Newland.
Dec. 17, Thimney v. Tomney.
Dec. 20, Glynn v. Chamberlayne.
Colkins v. Squance, 4 causes, fur. dirs. and costs.
Dec. 20, Single v. Tarrell.
Dec. 21, Edgson v. Edgson, 2 causes.
Wilkes v. Slaney.
Crackenthorpe v. Tourning.
Bate v. Hooper.
Lee v. Lee.
Lyde v. Lipscombe, Barnard v. Lipscombe.
Mocatta v. Varica, fur. dirs. and costs.
Short, Thompson v. Empson.
Barron v. Barron.
Clark v. Bates, fur. dirs. and costs.
Chapman v. Saker, exons.
Leadbeater v. Faulkner.
Short, Armstrong v. Paterson.
Sexton v. Smith, fur. dirs. and costs.
Davies v. Royle.
Shackels v. Richardson, fur. dirs. and costs.
Davies v. Davies.

Vice-Chancellor Stirling.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Dec. 4, Griffith v. Lunell, 4 causes, part heard.
S. O., Duke of Beaufort v. Morris, fur. dirs. and costs.
Dec. 4, Clay v. Rufford.
Hilary Term, Menoe v. Bagster.
Toulmin v. Copland.
Johnson v. Johnson, Ditto v. Ditto, part heard.
Tippins v. Coates, exons. 2 sets.
Thomas v. Thomas.
Girdlestone v. Creed.
Cooper v. Everett.
Timson v. Browne.
M'Calmont v. Turner.
M'Calmont v. Rankin, M'Calmont v. Bird, fur. dirs. and costs.
Gould v. Gould.
De Visse v. De Visse, 4 causes, fur. dirs. and costs.
Dufaur v. Dufaur.
Julian v. Julian.
Binns v. Ker.
Probert v. Rowlands.
James v. Lewis.
Hancock v. Beavan.
Stoney v. Stoney.
Newman v. Sillett.
Winthrop v. Murray.
Wisden v. Wisden.
Price v. Griffith.
Dec. 3, Nathan v. Pushman, Nathan v. Cobed, fur. dirs. and costs.
Dec. 11, Speakman v. Speakman, ditto.
Burt v. Burnham, 4 causes, ditto.
Dec. 3, Gray v. Seabrook, ditto.
Dec. 19, Evans v. Pritchard.
Dec. 21, Snow v. Parry.
Johnson v. Johnson, Ditto v. Ditto.
Savery v. Savery, Ditto v. Will, exons.
Kekewick v. Manning.

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PROVINCE OF THE BAR.

EXCLUSIVE AUDIENCE IN INSOLVENCY CASES IN THE COUNTY COURTS.

A SOMEWHAT extraordinary proposition has been put forward by a journal hitherto opposed to the appearance of attorneys as advocates in any of the Inferior Courts.* It is suggested, that "the law should recognize among the attorneys a class of advocates having, in all the Inferior Courts, the privileges of the Bar, who should be formally admitted and enrolled as such by the *Law Institution*, after a certain probationary period of practice as attorneys, and satisfactory assurance of good character entitling them to the honour; and then that they should be entitled to the fees of advocacy, but *prohibited* from practising as attorneys so long as they remained on the Roll of Advocates."

Such is the proposition which, coming from the editor, as a member of the Bar, is entitled to due consideration. The grounds on which the suggestion has been made are these:—

"The local Courts,—magistrates' and County Courts, and such like,—have grown of late years into great importance. Advocates have been required there, and a supply has appeared to meet the demand. Among the attorneys there has been formed a *body of advocates*, who very ably and satisfactorily conduct the business of these lesser Courts. Apart from the objection of the expense of their higher fees, it would never serve the purpose of the regular Bar to attend these Courts. But still there does apply to the advocates, who are attorneys, the objection which we have often heard raised by the rest of the profession, of the inconvenience of having to send their clients to another practising attorney to have their business conducted in these Courts, and thus to hazard the loss of them permanently."

Now it is obvious to remark, that the proposition to establish a class of advocates in the Inferior Courts, selected from the attorneys, and *prohibiting them from practising as attorneys*, whilst they are as it were on the Roll of Advocates, seems to be entirely founded on the supposition that this branch of the profession would object to employ their brethren of the same rank, and prefer the barrister. We venture to say, there is no foundation for this objection.

1st, It would be dishonourable if the attorney, employed by one of his brethren to represent him in Court, should accept the retainer of the client. It is so held in the case of the country solicitor and the London agent.

2ndly, The attorney-advocate would not personally communicate with the suitor. He would receive his instructions from the attorney. The sittings of the Court would frequently be at a distance from the residence of the client, who would employ his local attorney, and the latter would instruct his brother attorney as he now does his London agent.

3rdly, In most cases, the actual attorney of the client would also be the advocate in Court. It is supposed that attorneys are not at present practically competent to conduct cases in Court. We believe, in the majority of instances, this is altogether a mistake. They are not now in the habit of appearing as advocates, but they would soon fit themselves for the office. Even now it would be an advantage, consistently with the objects of the Inferior Courts, that the cases should be conducted without the parade of set speeches. An intelligent and sensible attorney who knows his case will have no difficulty in stating it.

4thly, Indeed the necessity of acquiring a facility in managing cases in a public Court

* *Law Times* of Dec. 8th.

is precisely what many of the Law Societies propose as a means of improving the talents and advancing the station of attorneys. The complaint is, that they have at present no sufficient inducement to seek for higher attainments than they possess, and no opportunity to exercise them when acquired.

The members of the Bar who raised the question of exclusive audience in insolvency cases at the York County Court, are counselled by our contemporary, (as they have often been on other occasions in these pages,) not to press the claim in question, even if they have a right to do so. The learned writer does not, however, give a very generous reason for his advice, for he says (it may be truly enough) that it will not be worth the while of four barristers (the smallest number to form a "regular Bar") to attend these Courts: *Ergo*, "it will be unfair towards the attorneys who practise there, to come down upon them and oust them at uncertain intervals, so that they would never know whether they were to be heard or not."

Independently of this question of fair dealing between the junior barristers-at-law and the attorneys-at-law, we should like to see the *interest of the suitor* somewhat taken into consideration. The claimants in behalf of the Bar do not sufficiently bear in mind that the *client* is an important person in the controversy. Now we are enabled to state, not merely from theory, however well supported, but from the actual experience of solicitors in the country, that the expense of employing counsel before the Insolvent Debtors' Commissioner on Circuit, worked great inconvenience and injustice. It is stated in a Resolution of the Leeds Law Society relating to the claim at issue, "that the success of such an attempt would defeat the purpose for which insolvency cases are sent to the County Courts by the expense it would occasion,—a similar expense having operated under the old insolvency practice in the country to *deter creditors from seeking redress* in the Insolvency Courts."

There is one statement of our contemporary upon the general question of the respective provinces of barrister and attorney, at which we are not a little surprised. He says:—

"The question really at issue is, whether it is desirable that the functions of advocate and attorney should be united or severed?—Whether the attorney should be permitted to be an advocate in the same matter in which he acts as attorney, and whether the advocate should be allowed to act as an attorney also: for these must follow one another; the attorney

could not be permitted to act as an advocate without also permitting the advocate to act as an attorney. To the Bar, the change would probably be a source of considerable advantage in a pecuniary point of view, and to the attorneys of very considerable loss."

It can hardly be seriously proposed, that if the attorneys' claim to be heard in the Inferior Courts on behalf of their clients, without the expense of employing counsel should be established, than that counsel in those Courts should be at liberty to act both as advocates and attorneys. We feel assured that the Bar, in general, do not desire such a result; and it is evident, that in order to qualify themselves for the duties of an attorney, they must be subjected under the statute to serve a clerkship, to pass through (what they would call) the *drudgery* of an office, and undergo an examination in the practical business of an attorney. And how would the important arrangement of fees be managed: some being recoverable at law and others honorary? Who would supply the capital, now found by the attorney, and incur all the expense and responsibility of an official establishment? No, no,—the present arrangement is much better for the Bar, and, we believe, they think not of making any change in the respective branches of the profession.

Let them, however, well consider whether it may not be expedient, as well for the sake of the public, as of justice to the second branch of the profession, to abandon the recent claims to exclusive audience, and permit the suitors to call in their learned aid when the exigence of a case may require it, and at other times to entrust their affairs to their accustomed advisers, who are legally responsible for the skilful and faithful discharge of their duties.

BANKRUPT LAW CONSOLIDATION ACT.

OFFENCES AGAINST THE LAW OF BANKRUPTCY.

THE framers of the new Bankruptcy Act, with a pretentious regard to arrangement, have, nevertheless, classed under distinct and separate heads many provisions which appear to be closely connected—an inconsistency not only productive of inconvenience, but which may hereafter create considerable difficulty in the administration of the law.

One of the most important divisions in the act 12 & 13 Vict. c. 106, is that relat-

ing to "offences against the Law of Bankruptcy," and yet we have seen (*ante*, p. 55,) that section 201, which relates to the offences of gaming, stock-jobbing, concealing or destroying books, making fraudulent entries, concealing property, or permitting fictitious debts to be proved, is comprehended in the division relating to "the certificate of conformity," for no other reason, that we can understand, but because the penalty which is to follow from the commission of such offences is, the refusal to grant the certificate, or the avoidance of such certificate when granted. How this provision conflicts with a subsequent section we shall presently have to observe.

The division relating to offences in the new act commences with section 251, which provides that a bankrupt not surrendering and submitting to be examined, or not making discovery of his estate and effects, or not delivering up his goods, books, &c., or removing or embezzling to the value of 10*l*. shall be guilty of felony, and shall be liable to transportation for life, or imprisonment, with or without hard labour, for any period not exceeding seven years. This provision is a re-enactment of the 5 & 6 Vict. c. 122, s. 32, and the 6 Geo. 4, c. 16, s. 112, but with one alteration which is not unimportant, in reference to the offence of not surrendering, namely, the introduction of the words, "having no lawful impediment proved to the satisfaction of the Court at such time, and allowed by the Court, by a memorandum thereof then made on the proceedings." The 5 & 6 Vict. c. 122, s. 33, authorised the Court, as often as such Court should think fit, to enlarge the time for the bankrupt surrendering himself, so that the order to enlarge was made six days before the day on which the bankrupt was to surrender. The power to enlarge the time for surrendering is not continued, in words, at all events by the present act, but under the words cited, if it be proved to the satisfaction of the Court, at the time appointed for his surrender, that a bankrupt is prevented from surrendering by some lawful impediment of which a memorandum is recorded, the offence contemplated by this section is not committed. We apprehend that a bankrupt not wilfully omitting to surrender was never guilty of a felony, and therefore the liability of the bankrupt is not altered by the new enactment; but the power to enlarge the time for the surrender of a bankrupt who is absent from the kingdom, or otherwise un-

able to attend, was often conveniently exercised, and it seems more than doubtful whether any such power now exists.

Section 252, which declares that a bankrupt destroying or falsifying his books, or making false entries with intent to defraud his creditors, is guilty of a misdemeanour and liable to imprisonment for three years, is a re-enactment of the 5 & 6 Vict. c. 122, s. 34, and the next provision, declaring a bankrupt who obtains credit under the false pretence of dealing in the ordinary course of trade, within three months preceding his bankruptcy, guilty of misdemeanour and punishable by imprisonment for two years, is a re-enactment of the 5 & 6 Vict. c. 122, s. 35.

Section 204, relating to the punishment of perjury, is founded on the 6 Geo. 4, c. 16, s. 99, but greatly altered in form. It is in these words:—

"That any bankrupt or bankrupt's wife who shall, upon any examination upon affirmation, or after making and signing the declaration authorized or directed by this or any other act relating to bankrupts, and any person who shall, upon any examination upon oath or affirmation, or in any affidavit or deposition or solemn affirmation so authorized or directed, or in any affidavit or deposition or solemn affirmation, wilfully and corruptly give false evidence, or wilfully and corruptly swear or affirm anything which shall be false, being convicted thereof, shall be liable to the penalties of wilful and corrupt perjury."

Section 255 differs from section 36, 5 & 6 Vict. c. 122, for which it is substituted in two material particulars. The section last referred to required the request in writing of three creditors who had proved debts to the amount of 50*l*. or upwards before a prosecution was instituted. Section 256 authorizes the Court to direct the prosecution without any such request. The present act also authorizes the expense of the prosecution to be defrayed out of the general funds standing in the name of the Chief Registrar, where there is no estate under the particular bankruptcy. This clause furnishes a further instance of the carelessness with which the act is framed, for although, as before mentioned, the request of creditors is, we doubt not, intentionally dispensed with, at the conclusion of the section the Court is empowered, if the assignees neglect or refuse to carry on the prosecution, to direct it to be carried on by the official assignee alone, "or by the creditors making such request."

The 258th section, which renders it imperative on the Court, if it appear upon the Sittings appointed for the last examination

or certificate of the bankrupt, or any adjournment thereof, that he has committed any one of the nine offences therein enumerated, to refuse further protection, and either refuse the bankrupt his certificate or suspend it for such time as the Court shall think fit, has already been printed without abridgment in our pages.^b The provision by which the same offences are made the subject of investigation at the last examination of the bankrupt, and also when he applies to the Court for a certificate, is, to say the least, inconvenient. Hitherto, in practice, the investigation at the meeting for the last examination has been confined to the subject of the accounts rendered by the bankrupt, with a view to ascertain their fulness, accuracy, and sufficiency, and inquiry into the bankrupt's conduct as a trader was reserved until he came up for his certificate. Under the section now under consideration, it does not appear that the Commissioner can decline, at the examination meeting, to inquire into any fraud or misconduct coming within the scope of the offences enumerated, or if any of such offences be proved, to withhold further protection from the bankrupt. If this be so, it suggests the practical anomaly, that although the bankrupt is entitled, as we have seen, under section 198, (*ante*, p. 54,) to three days' notice of opposition at the certificate meeting, he may be opposed on the same grounds at the examination meeting without any notice.

The statement of the seventh class of offences referred to in section 256,—a class of offences previously found in the Insolvent acts, but now for the first time imported into the Law of Bankruptcy,—contains a word calculated to create some doubt as to the intention of the legislature. It is in these terms:—

"If the bankrupt shall, within six months next preceding the issuing of the fiat or the filing of the petition of adjudication of bankruptcy, have put any of his creditors to any unnecessary expense by any vexatious and frivolous defence or delay to any suit for the recovery of any debt or demand provable under his bankruptcy, or shall be indebted in costs incurred in any action or suit so vexatiously brought or defended."

Whether it is intended that vexatiously bringing an action is to be considered as an offence on the part of a plaintiff who becomes bankrupt, we shall not undertake to determine; but a bankrupt could not be said to be "indebted in costs" incurred in such an action or suit, until it was deter-

mined, and as the previous part of the clause only refers to "frivolous defence and delay," it is quite possible, as suggested by an able writer in a contemporary periodical,^c that the word *brought* be "crept in by mistake."

Sections 257 and 258, which convert the assignees for the time being, and all the creditors of a bankrupt who have proved their debts into judgment creditors, and entitle them, if the certificate is suspended or refused, or protection withheld, to take the body of the bankrupt in execution, have been already submitted to our readers in *extenso*, and may be regarded in every point of view as the most important alteration effected in the law by the new act.

A new principle is by these clauses introduced into the Bankrupt Law. The power of arresting and imprisoning a bankrupt is conferred upon the assignee and the creditor, not by way of remedy, but as a punishment; for section 259, which was the subject of lengthened commentary in a recent number,^d expressly provides, that any bankrupt taken in execution after the refusal of protection, or after the refusal or suspension of his certificate, "shall not be discharged from such execution, until he shall have been in prison for the full period of one year, except by order of the Court." The power of inflicting the punishment is placed, without any qualification, in the hands of every creditor who has proved, without reference, it would appear, to the amount of his debt, whilst the Court, we presume, is meant to be invested with a discretion to order the period of imprisonment to be abridged, as no other intelligible effect can be given to the somewhat vague phrase, "except by order of the Court."

Section 260, which provides, that any person refusing to be sworn, or to answer, or not fully answering, or refusing to sign his examination, or to produce books, &c., has been printed in a recent number,^e and the omission throwing doubt upon the power of the Court to commit a bankrupt, or his wife, refusing to sign the declaration pointed out.

Clause 261, requiring, that where any person is committed for not fully answering the questions shall be specified in the warrant, is similar in substance to the 6 Geo. 4, c. 16, s. 39; and the four sections which follow, relating to the conduct of official assignees respecting unclaimed divi-

^c Law Review, vol. 11, No. 21, p. 151, n. 2.

^d Vol. 38, pp. 325, 326. ^e Vol. 38, p. 499.

deeds, are substituted for similar provisions in the 5 & 6 W. 4, c. 29, and the 6 & 7 W. 4, c. 27, without any material alteration.

Section 266, giving the power of committal for disobedience to any rule or order of Court, agrees in substance with the 19th section of the 6 & 7 Vict. c. 111; but as that section has not been as much acted upon heretofore as it is now likely to be, it is here inserted:—

“That if any person shall disobey any rule or order of the Court duly made by such Court, for enforcing any of the purposes and provisions of this act, or of any other act hereafter to be in force relating to the subject-matter of this act, or made or entered into by consent of such person for carrying into effect any of such purposes or provisions; this Court may, by warrant in the form contained in schedule B. b. to this act annexed, commit the person so offending to the Queen’s prison; or to the common gaol of any county, city or place, where he shall be found, or where he shall usually reside, there to remain within bail or imprisonment until such Court; or the Vice-Chancellor or the Lord Chancellor shall make order to the contrary.”

Sect. 267, which gives the Court authority to order satisfaction where the debt sworn to is not due or the act of bankruptcy not proved, and a petition is filed fraudulently or maliciously, has been printed (at vol. 38, p. 326,) in which page also will be found section 272, which declares it to be a misdemeanour to insert “any advertisement under this act, without authority or knowing the same to be false in any material particular.”

The only remaining sections, falling under this division of the act, and calling for special notice, are the 268th, 274th, and 275th sections. The first of these, which is directed against any secret dealings between the petitioning creditor and the bankrupt, and is intended to prevent the former from using the Bankrupt Laws to obtain an advantage over other creditors, differs from the 8th section of the 6 Geo. 4, c. 16, for which it is substituted by providing, that the money satisfaction or security, received by the petitioning creditor after the bankruptcy, shall be repaid or delivered up to the assignees for the benefit of creditors, and not as in the 6 Geo. 4, c. 16, s. 8, to such persons as the Commissioners shall appoint.

The 274, imposes a penalty of 500*l.* on a gaoler refusing to receive a bankrupt or other person, as well as the penalty imposed by 6 Geo. 4, c. 16, s. 38, upon the gaoler suffering such person to escape; and the last section in this division (s. 275,) requires that forfeitures recovered by assignees under this act, shall be paid into the

Chief Registrar’s account, instead of being divided amongst the creditors in the particular bankruptcy as provided by the 5 & 6 Vict. c. 122, s. 8.

RECENT DECISIONS UNDER THE COUNTY COURTS ACT.

TOWARDS the close of the Banco Sittings after Term, at Westminster, a case was decided in the Court of Common Pleas under the stat. 9 & 10 Vict. c. 95, the practical importance of which will be readily understood. The facts were briefly as follow:—A flour merchant named Vines had a claim against a customer named Arnold, for ten barrels of flour alleged to be delivered, in February, 1847, of the value of 21*l.* 10*s.*, and 17*l.* for flour subsequently delivered, and before commencing any proceedings transmitted an invoice to the debtor containing both items. In January, 1848, the plaintiff entered a plaint in the County Court of Lambeth for 17*l.*, in respect of the claim of latest date, to which the defendant made no resistance, and the plaintiff had a judgment for the full sum claimed, and afterwards received the amount so recovered. The plaintiff then brought his action in the Common Pleas for 21*l.*, and to this action the defendant pleaded “never indebted,” and that the plaintiff sued for the debt, of which 21*l.* was parcel, in the County Court, and abandoned the excess beyond the sum recovered by the judgment in that Court. The jury found the issue raised on the last plea for the defendant, but the Court of Common Pleas set aside the verdict for the defendant and directed it to be entered for the plaintiff, on the ground that the evidence did not show that the plaintiff abandoned the excess beyond 20*l.* in the County Court. It was intimated by the judges of the Common Pleas, that it would be a good defence to a suit in the County Court to show that it was brought for parcel of a debt exceeding 20*l.*; and the plaintiff ought to be nonsuited unless he consented to abandon the excess, but the plaintiff must have the option to be nonsuited or abandon the excess; and if the defendant fail to take the objection in the County Court, it will not be competent for him to raise it in answer to an action in the Superior Court for the residue of the plaintiff’s demand.

The result of this decision is, that a party subject to a demand exceeding 20*l.*, and who does not desire to submit to try the question first in the County Court and

afterwards in the Superior Court, must take his stand in the first instance in the County Court, and object to the plaintiff's proceeding there, unless he expressly abandons his claim to so much of the debt as exceeds 20*l*. In cases where the claim is much larger than the sum admitted, and a sum approaching to that which is admitted to be due, is sued for in the County Court, it has not been unusual to advise that judgment should be suffered to pass by default in order to avoid litigation. It would seem, however, from the decision of the Court of Common Pleas in *Vines v. Arnold*, that it is incumbent on a defendant to insist on his defence in the County Court, when sued for a parcel of the sum claimed; or he will be afterwards barred from raising such a defence.

The Court of Common Pleas determined another point during the late Sittings, which will afford general satisfaction, namely, that a party suing in *forma pauperis* in the Superior Courts and recovering less than 20*l*, was liable to have a suggestion entered to deprive him of costs, in the same manner as a party suing subject to the ordinary liability as regards his adversary's costs. This proposition was disputed on the ground that the stat. 11 Hen. 7, which authorises the Courts to admit poor persons to sue as paupers, only applied to the Superior Courts, and that a pauper could not be admitted to sue as such in the County Court. The Common Pleas, however, held that the judges of the County Courts had the same discretion as the judges of the Superior Courts to permit persons to sue in *forma pauperis*, and that when the subject-matter of the claim was within the jurisdiction of the County Court, that tribunal was peculiarly adapted for the disposal of actions brought by paupers. It is to be hoped, therefore, that in future many of the pauper cases which have hitherto been tried in the Superior Courts will be transferred to the inferior jurisdiction.

NOTICES OF NEW BOOKS.

The Doctrine and Practice of Equity; or, a Concise Outline of Proceedings in the High Court of Chancery; designed principally for the use of Students. By G. GOLDSMITH, A.M., of the Middle Temple, Barrister-at-Law. Fourth Edition. London: William Benning & Co., 43, Fleet-street. Pp. 426.

This is a much improved edition of Mr. Goldsmith's Summary of the Doctrines and

Practice of Equity. It is intended chiefly for the use of Students at the commencement of their course of reading, and the author has for this purpose made a judicious selection of the most important topics of equitable jurisdiction, with an outline of the course of procedure. The subjects of the several chapters are as follow:

After an introductory statement relating to the judges and officers of the Court of Chancery, the First Part of the Treatise comprises: 1. A brief historical outline of the Court of Chancery. 2. General observations on Equity. 3. The various branches of the Court of Chancery.

The Second Part treats of the equitable Jurisdiction of the Court. 1. Accident and mistake. 2. Account. 4. Fraud. 4. Infants. 5. Specific performance of Agreements. 6. Trusts.

The Third Part contains a brief view of the several principal steps in a suit of Chancery. 1. By and against whom a suit may be instituted. 2. The Bill—Receiver. Writ of ne exeat regno. 3. The parties to a suit. 4. The several kinds of bills. 5. The subpoena, its return and service. 6. Non-appearance—attachment—contempt—taking bill pro confesso, &c. 7. Appearance of peers—of a feme covert—Infant—of persons of unsound mind—Corporations. 8. Defendant's appearance—Orders for time. 9. Compelling answer—Proceedings under orders of 1845. 10. The various modes of defence:—the demurrer—the plea—the answer—disclaimer. 11. Exceptions to answering—the report—Amendment of bill—Dismissing bill. 12. Replication. 13. Commission to examine witnesses—Interrogatories, &c. 14. Rules to produce witnesses and pass publication. 15. Setting down cause for hearing—Subpoena to hear judgment—Re-hearing—Decree. 16. Minutes of decree—The hearing—Appeal—Caveat against decree—Bill of review. 17. Issue at law—Reference to the Master—Proceedings in the Master's office—Report—Further directions. Final decree. 18. Suing and defending in *forma pauperis*—Costs.

This analysis of the contents will inform or remind the student of the leading subjects of equity, and the several stages of a suit, which he will find concisely described in these pages. There is a good index to the volume, but it requires a Table of Contents, which we recommend to be prefixed to the next edition.

The following extract from the Preface will more fully explain the scope and object of the work:

"In presenting the following pages to the public, the Author conceives that no just offence can be taken for his having attempted to add one more stepping-stone to those already placed in the path of the inexperienced but inquiring Student, for the purpose of facilitating his ascent to the more extensive and abstruse researches in that department of the profession which forms the consideration of this little work. The want, which is so frequently lamented in the commencement of this part of the Law Students' labours, of some epitomized publication, wherein the leading doctrines and practice of Equity are so concentrated as to give at one view the whole scope of the subject, often induces him to sketch out for himself a plan of every work of authority to which he may have recourse during the progress of his studies; but, as these books principally relate to one single branch or other of Equity, without combining in them the entire system of equitable jurisprudence, they appear, notwithstanding their great and intrinsic merit, too voluminous and mighty for the memory of a mere tyro, who is seeking to condense, by some analytical contrivance, the principles and practice of the Court, before he enters at large upon the more profound and scientific study of his profession. The reason of the inadequacy of such works to meet the immediate exigencies of the Student is obvious,—that they are written for the direction and information of the skilful and apt practitioner or learned advocate, rather than the uninitiated pupil; and thus the latter, without possessing any clear notions of even the rudiments of the subject, is at once brought into contact with all the niceties and subtle reasonings of the practised mind, addressing itself to minds equally matured.

"The object of these few pages is, therefore, to give the Student such a general survey or outline of the theory and practice of the Courts of Equity, as to enable him so to acquaint himself with the subject, that he may not feel his energies damped when called upon to engage with the more abstruse and minute researches into their separate and distinct branches. Nothing can be more disheartening to the uninitiated in any science than to be confined to the dry task of becoming acquainted with one particular and isolated portion of it, previously to his being furnished with its general principles, and the relative bearing which one part has to another. It is surely time enough to obtain a knowledge of the various cities or towns of any particular country, after one has become acquainted with the four quarters of the globe that quarter in which the identical country is situated, and the position which the latter holds with respect to neighbouring nations. Every Student feels anxious to possess a general sketch of his study, before he sits down to grapple with its parts in detail—to have, in fact, so comprehensive a notion of the whole, as to be able to answer any fair and general question relating thereto, whenever necessity or occasion may require. It is for such

purpose that the Author has presumed to address this little work to the rising members of the profession, in the anticipation that it will not only assist them in their inquiries prior to being admitted into fellowship with the acknowledged members of the law, but will also prove a kind of *vade mecum* whilst engaged in the active duties of their calling.

"It must, however, be distinctly understood that these suggestions are by no means intended to supersede all further inquiry into the subject of which they profess to treat,—the main object of the Author being rather to facilitate and clear the way for more extensive examination; in other words, to afford the Student such a knowledge of the equitable jurisdiction, as will induce him to follow out the points, many of which are but slightly hinted at, and thereby enable him, by an easier course, to arrive at a fair and creditable position among the numerous members of the legal profession.

"And, since to the practised lawyer, or experienced solicitor, all works of an elementary character can offer but very few attractions, the following is therefore chiefly presented to those who are anxiously preparing themselves previous to their taking a part in the more onerous responsible duties which they will ultimately be called upon to fulfil."

MOOT POINTS.

LOAN.—RECEIPT.—PROMISSORY NOTE.

A. lends to B. 100*l.*, B. at the time giving A. a receipt for the amount on a 1*l.* 6*d.* receipt stamp, and stating it was a loan to be repaid by instalments. On the back of the receipt was written the dates upon which the instalments should be paid and the amount of each instalment; whenever B. paid an instalment A. struck his pen through the corresponding instalment on the back of the receipt. A. afterwards died, leaving C. and D. executors, since which time B. has not been able to meet several of the instalments. Can C. and D. take proceedings against B. for the recovery of the amount now unpaid?

LAND TAX.

A. purchases freehold land by auction, let to a tenant. The particulars of sale do not disclose whether the property is exonerated from land-tax or not, but the vendor engages to clear all outgoing to a given day. Is it incumbent on the vendor to show whether the land-tax is redeemed or not?

SELECTIONS FROM CORRESPONDENCE.

LOCAL AND PRIVATE ACTS.

To the Editor of the Legal Observer.

SIR,—Having observed in the Postscript to a recent number of your Journal, that a solicitor has represented to you the difficulty of obtaining access to Local and Private Acts of

Parliament, I think that it may be usefully made known that the Yorkshire Law Library, here, through the liberality of two resident solicitors, contains a nearly complete collection of Local and Private Acts, between the years 1758 and 1818, in 75 volumes. They relate to property in all parts of the kingdom, and have been indexed to facilitate reference. Those which affect Yorkshire property are indexed for the most part alphabetically. I am, &c.

HENRY NELSON CHAMPNEY, Sec.

[We understand that the collection of Local and Private Acts in the Library of the Incorporated Law Society is very large, and the Council of the Society are using their exertions to render it as complete as possible.—Ed.]

THE LEGAL OBSERVER'S EDITION OF THE STATUTES.

Being convinced it is your desire to make the *Legal Observer* as useful as possible, and to insert only such matter as may be most beneficial to its readers, I take the liberty to suggest to you the inquiry whether your determination, as expressed in your number for the 27th October last, at page 500, "to comprise in the pages of the *Legal Observer* every statute that bears upon the law or the practice of the Courts," is not liable to the following objection, viz. —That it swells your volumes with matter which *must* form the subject of separate volumes in the shape of "The Statutes at Large," which every practitioner is obliged to load his shelves with—so that he must pay twice over for the *same* matter.

A short notice of each important act is very useful, and your comments upon many of them are valuable; but surely the printing the acts *in extenso* is not necessary, and it must exclude other *original* matter which might be more useful.

Having taken in the work from its commencement, at no small cost, and observed your desire to make such alterations in it as might from time to time be desirable, I am induced to submit the above for your consideration, and am, &c.

E. Y. C.

[We think our correspondent is mistaken in supposing that the Statutes at Large are taken by the profession generally, and consequently the majority of our readers approve of the New Statutes relating to the Law being printed in the *Legal Observer*. Besides, the greater part of them are given during the Long Vacation, when other matter of a temporary kind is not urgent. It will be recollected that we limit the selection to important Statutes relating to the Law.—Ed.]

DESCRIPTION OF PARTIES BY INITIALS.

SIR,—It may, perhaps, add something to the value of the article in your last number, "On Actions on Bills and Notes," if your readers were supplied with the form in which an averment should run, in cases where the description of the parties is by "Initials." The decisions to which you have referred made

it necessary for me to amend the declaration and my pleader advised that it should be done in these words:—

"And the said defendant then accepted the said bill, and in and by his said acceptance the defendant there designated and described himself by the description and name of J. W. Jones, and by the said initial letters of J. W. of the Christian and first names of the said defendant before the said surname of Jones and the defendant did not in and by the said acceptance designate or describe himself, nor was he designated or described in and by the same otherwise than as aforesaid."

The above may very readily be adapted to the drawer or indorser of the bill. LEGALIS.

LEGAL OBITUARY, 1848-1849.

From *The Legal Year-Book*, 1850.

Baker, Robert, Solicitor, Town Clerk of Newbury, Berkshire, and to Borough Justices. April 6, 1849. Admitted on the Roll of C. P. H. T., 1806.

Baker, William, Solicitor, of Penryn, Cornwall, aged 57. March 16, 1849. Admitted on the Roll of Q. B. M. T., 1813.

Barber, Charles Henry, Q. C., aged 67. August 22, 1849. Called to the Bar by the Society of Gray's Inn, July 6, 1810. Appointed King's Counsel, December 27, 1834.

Bateman, John Jones, (firm Bateman and Bennett,) of Lincoln's Inn, Solicitor. July 14, 1849. Admitted on the Roll of Q. B. E. T., 1806.

Bayley, William, Solicitor, of Stockton-on-Tees, aged 55. October 5, 1848. Admitted on the Roll of Q. B. H. T. 1816.

Bennett, Sidney Walsingham, Solicitor, of 63, Middle Street, Brighton, aged 48. Dec. 20, 1848. Admitted on the Roll of Q. B. M. T., 1823.

Brown, Thomas, (firm Lumley, Nicholl, Smyth, and Brown,) of 18, Carey Street, Lincoln's Inn, Solicitor, aged 59. Sept. 30, 1848. Admitted on the Roll of Q. B. H. T., 1843.

Buller, Charles, Q. C., and M. P. for Liskeard, and President of Poor Law Board, aged 41. Nov. 29, 1848. Called to the Bar of Lincoln's Inn, on June 10, 1831, appointed Secretary to the Board of Control in 1841; in June, 1842, Judge Advocate General; and in Nov. 1842, Queen's Counsel.

Carter, John, Solicitor, of Coventry, aged 79. Nov. 28, 1848. Admitted on the Roll of Q. B. E. T., 1791.

Claxton, Robert, Chief Justice and Judge of Vice-Admiralty Court, St. Christopher's, aged 55. March 18, 1849.

Cottingham, John, M.A., Police Magistrate, Southwark, and Fellow of Trinity Hall, Cambridge. July 31, 1849. Called to the Bar of Lincoln's Inn, June 12, 1815.

Grove, William, Solicitor, of Uckfield, Sussex. June 5, 1849. Admitted on the Roll of Q. B. T. T., 1826.

Dowling, Willsburghy James, Solicitor, at

Bathurst, New South Wales, aged 38. May 15, 1849.

Ford, William, M. A., of 1, Essex Court Temple, Equity Draftsman and Conveyancer. Nov. 30, 1848. Called to the Bar of Middle Temple, Nov. 7, 1817.

Garbutt, William, (firm Garbutt and Fawcett,) of Yarm, Yorkshire, Solicitor, Clerk to Magistrates, Deputy Lieutenant, and Commissioner of Taxes for divisions of Lanbaugh West and Yarm. July 13, 1849. Admitted on the Roll of Q. B. T. T., 1820.

Gardner, Robert, Solicitor, of Southam, Warwickshire, aged 27. March 28, 1849. Admitted on the Roll of Q. B. H. T., 1845.

Gaskell, Henry, (firm Darlington and Gaskell,) Solicitor, of Wigan, Lancashire. June 3, 1849. Admitted on the Roll of Q. B. E. T., 1799.

Gell, Alfred, of Eastbourne, Sussex, Solicitor, County Clerk, and Clerk to Magistrates of Hailsham division of Pevensey, aged 32, January 30, 1849. Admitted on the Roll of Q. B. T. T., 1840.

Godson, Richard, M. A., Q. C., and M. P. for Kidderminster, Counsel to the Admiralty, and Judge Advocate of the Fleet, August 1, 1849. Called to the Bar of Lincoln's Inn, July 10, 1821.

Hardacre, William, (firm Hardacre and Holmes,) Solicitor, of Colne, Lancashire, aged 68. Sept. 7, 1849. Admitted on the Roll of Q. B. M. T., 1805.

Harrison, John, (firm Addison and Harrison,) Solicitor, of 11, Staple Inn, aged 31. Oct. 30, 1848. Admitted on the Roll of Q. B. M. T., 1849.

Heathfield, Richard, M. A., aged 46. Dec. 24, 1848. Called to the Bar of Lincoln's Inn, June 24, 1828.

Hodgson, John, Q. C., late one of the Commissioners for inquiring into the Law of Real Property, aged 64. August 30, 1849. Called to the Bar of Lincoln's Inn, April 30, 1812.

Jennings, Charles, (firm C. and E. J. Jennings,) of 1, Mitre Court Buildings, aged 64. Feb. 3, 1849. Admitted on the Roll of C. P. H. T., 1809.

Jerny, Isaac, Recorder of Norwich. Appointed Steward of Norwich in 1826, and Recorder in 1831.

Kay, Samuel, (firm Kay and Son,) Solicitor, of Manchester, aged 72. Dec. 21, 1848. Admitted on the Roll of Q. B. H. T., 1799.

Langton, David, Solicitor, of 101, Guildford Street, Foundling, aged 64. Sept. 7, 1849. Admitted on the Roll of Q. B. H. T., 1809.

Lowless, Joseph, (firm Lowless and Son,) Solicitor, of 2, Hatton Court, Threadneedle Street, aged 78. June 25, 1849. Admitted on the Roll of Q. B. T. T., 1808.

Minshall, Nathaniel, sen., Solicitor, of Oswestry, Salop, Superintendent Registrar of Writs, aged 68. Oct. 13, 1848. Admitted on the Roll of Q. B. M. T., 1820.

Missing, Richard, Special Pleader, Western Circuit. Called to the Bar of the Inner Temple, June 28, 1816.

Morgan, Richard, of 4, New Square, Lin-

coln's Inn. Sept. 8, 1849. Called to the Bar Feb. 11, 1819.

Morphett, Nathaniel, Solicitor, of Serjeants' Inn, aged 70. Dec. 6, 1848. Admitted on the Roll of Q. B. M. T., 1812.

Murdoch, John, Solicitor, of 11, Furnival's Inn, aged 25. Sept. 23, 1849. Admitted on the Roll of Q. B. M. T., 1845.

Nicholson, William, Solicitor, of 8, Lincoln's Inn Fields, aged 62. Oct. 15, 1849. Admitted on the Roll of Chancery, June 14, 1836.

Palmer, Frederick, (firm of F. and H. Palmer,) Solicitor, of 4, Mitre Court Chambers. Sept. 4, 1849. Admitted on the Roll of Q. B. M. T., 1823.

Parsons, Charles, Solicitor, of Temple Chambers, Fleet Street. June 28, 1849. Admitted on the Roll of Q. B. M. T., 1830.

Perring, Claude, of 19, Devonshire Place, Conveyancer. May 18, 1849. Called to the Bar of Inner Temple, May 4, 1832.

Powell, James, Solicitor, of Pocklington, aged 75. Nov. 11, 1848. Admitted on the Roll of Q. B. H. T., 1805.

Probert, Thomas, Solicitor, of Newport, Essex. May 27, 1849. Admitted on the Roll of Q. B. M. T., 1806.

Pycroft, Thomas, M. A., of the Middle Temple, aged 75. March 9, 1849. Called to the Bar, Jan. 25, 1811.

Reynard, Alfred Way, M. A., of Hall Staircase, Inner Temple, aged 43. Aug. 15, 1849. Called to the Bar, May 9, 1834.

Roberts, William, M. A., of the Middle Temple, Formerly Secretary to the Commissioners of Ecclesiastical Revenue Inquiry, and a Commissioner of Bankrupts, and for inquiring into Charities, aged 82. May 21, 1849. Called to the Bar, Nov. 28, 1806.

Rymer, William, Solicitor, of Darlington, aged 53. Dec. 28, 1848. Admitted on the Roll of Q. B. E. T., 1819.

Seton, Sir Henry Wilmot, Knight, one of Her Majesty's Judges of the Supreme Court of Bengal. July 26, 1849. Called to the Bar by Lincoln's Inn, June 20, 1809.

Snelson, Mark, Solicitor, of Ashby-de-la-Zouche, aged 48. Aug. 3, 1849. Admitted on the Roll of Q. B. T. T., 1825.

Spencer, Edward, Solicitor, of 11, Brunswick Parade, Pentonville, aged 49. Feb. 14, 1849. Admitted on the Roll of Q. B. H. T., 1820.

Spurrier, John William, of 25, Old Square, Lincoln's Inn, formerly Professor of Law and Jurisprudence at King's College, London. Nov. 14, 1848. Called to the Bar, April 28, 1818.

Starkie, Thomas, M. A., Q. C., Downing Professor of Law in the University of Cambridge, one of the Counsel to the University, and Judge of the Clerkenwell County Court, formerly one of the Commissioners for inquiring into the practice and proceedings of the Courts of Common Law, and Lecturer on Common Law and Equity to the Society of the Inner Temple. April 25, 1849. Called to the Bar of Lincoln's Inn, May 23, 1810.

Thompson, Frederick Elijah, (firm Thompson and Powell,) Solicitor, of 3, Raymond

Buildings, aged 52. Aug. 1, 1849. Admitted on the Roll of C. P. M. T., 1828.

Topham, John, Solicitor, of Middleham, Yorkshire, and Clerk of the Peace for the North Riding, aged 71. March 28, 1849. Admitted on the Roll of Q. B. H. T., 1836.

Troughton, John, of Leach Hall, Lancashire, Solicitor, aged 78. March 25, 1849. Admitted on the Roll of C. P. at Lanc., Aug. 16, 1793.

Truwitt, George, jun., of 2, Cook's Court, Lincoln's Inn, and Finchley, Solicitor, aged 27. Oct. 10, 1849. Admitted on the Roll of Q. B. T. T., 1849.

Wallace, Edward James, of Bombay, Clerk to the Crown in the Supreme Court. Aug. 17, 1849. Called to the Bar of the Inner Temple, Nov. 20, 1840.

Waring, Thomas, Solicitor, of 4, White Lion Court, Cernhill, aged 29. June 9, 1849. Admitted on the Roll of Q. B. M. T., 1847.

Watlington, George, of 45, Upper Bedford Place, Russell Square, late one of the Prothonotaries of the Court of Common Pleas, and Recorder of St. Alban's, aged 79. Nov. 28, 1848. Called to the Bar of the Inner Temple, Nov. 21, 1794.

Webster, Thomas, Solicitor, of 24, Queen-Street, Cheapside. May 29, 1849. Admitted on the Roll of Q. B. H. T., 1799.

Weston, Thomas Eyre, of 43, Lincoln's Inn Fields. Sept. 11, 1849. Admitted on the Roll of Q. B. E. T., 1821.

INSOLVENT COURT ADMISSIONS.

The following statement is from "An Old Subscriber:"—

"I have lately commenced practice in the country, and having been informed by a client that he should want me to transact some business in the Insolvent Court for him, I wrote to my agent as to the steps to be taken to procure my admission in that court, when I was informed that I must get a certificate of my respectability and qualifications, &c., to practise in such Court, signed by two or three respectable inhabitants of the town where I reside, and addressed to the judge of the County Court for the district, and I received at the same time a certificate for the signature of such judge, 'that he knows me—that he considers me to be a respectable man, qualified to practise—and that it was expedient, and he recommended my admission in the Court, &c.'

"In pursuance of this I procured a certificate accordingly, signed by eight of the most respectable inhabitants of the town where I am resident and practising, certifying to the judge that they had known me many years—that I was respectable and qualified to practise, &c.; but judge of my surprise, on producing this to the judge and requesting his signature, to find that he refused to sign the necessary certificate for my admission, on the ground that he did not know me!

"I submit, that as the Insolvent Court has made such a rule as this, the sooner it is

altered the better, as myself and other solicitors similarly situated, can never get admitted to that Court while this rule continues in force, but I think it never could have been intended that a respectable practitioner should be excluded from being admitted and thereby injure both himself and his client, because the judge of the district where he resides does not know him; as I should imagine, he ought to act upon the certificate produced to him as signed by persons most of whom are known to him."

BARRISTERS CALLED.

Michaelmas Term, 1849.

LINCOLN'S INN. November 22.

Henry Tyrwhitt Jones Macnamara, Esq.

George Percival Smith, Esq., B. A.

James Heard Pulman, Esq.

William Parker, Esq.

William Henry Tindall, Esq.

John Gardner Dillman Engleheart, Esq., M. A.

Henry Robert Young, Esq., M. A.

Edmund Dorman Hodgson, Esq., M. A.

Edward Russell James Howe, jun., Esq., M. A.

John Spankie, Esq., M. A.

INNER TEMPLE. November 16.

Benjamin Bright, Esq., M. A.

Henry Thurston Holland, Esq., B. A.

George Arthur Knightly Howman, Esq., B. A.

George Hailey Prentice, Esq., M. A.

John Maurice Foster, Esq., B. A.

Alfred Walker Simpson, Esq., M. A.

George Cooper Butler, Esq., B. A.

November 23.

Robert Alexander Osborne Dalyell, Esq., M. A.

George Du Pré Porcher, Esq., M. A.

MIDDLE TEMPLE. November 5.

John Robert Davison, Esq.

Theodore Walround Fuller, Esq.

November 24.

George Atty, Esq.

Michael Prendergast, Esq.

David Bingham Daly, Esq.

James John Bate Rowley, Esq.

John Marshall, Esq.

John Bradshaw Godfrey, Esq.

Edward Harper, Esq.

Frederick Lawrence, Esq.

William Nelson, Esq.

James Stewart Thorburne, Esq.

John Wesley Nelson, Esq.

Isidore Jolivet, Esq.

John Gilmour, Esq.

John Day, Esq.

GRAY'S INN. November 7.

John Dyerell, Esq.

November 21.

William Harrison, Esq.

Richard Reader Harris, Esq.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re North of England Joint-Stock Banking Company, ex parte Sanderson. Nov. 7, 1849.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—NOTICE OF APPEAL.

Held, that under the 33rd section of the 12 & 13 Vict. c. 108, an appeal will not be entertained from an order made under the 11 & 12 Vict. c. 45, where more than 21 days have elapsed from the date of the order appealed against and the notice of appeal motion.

THIS was an appeal from an order of the Vice-Chancellor Knight Bruce holding that the name of the transferer of certain shares in the above company was properly inserted in the list of contributories with a qualification limiting the liability from the time of contracting to purchase the shares.

Bacon and Headlam in support.

J. Russell contended, that as the time for appealing under the 12 & 13 Vict. c. 108, s. 33, had expired, the motion must be refused.

The Lord Chancellor said, that the 33rd section of the 12 & 13 Vict. c. 108, was clearly retrospective, and although it must have been an oversight, the Court could not entertain the appeal, and it must therefore be dismissed.

In re St. George's Steam Packet Company, ex parte Pim. Nov. 7, 1849.

NOTICE OF MOTION.—APPEAL.—IRREGULARITY.

A notice of motion to discharge two orders under the Winding-up Act of the Master and Vice-Chancellor Knight Bruce, and for a declaration to include the name of the respondent in the list of contributories for certain shares in his own right "or" as representative of his father, was held bad, and the motion was refused with costs, but leave was given to amend the notice. Quere, whether, under the 12 & 13 Vict. c. 108, s. 33, such leave to amend can be given after the expiry of three weeks from the date of the orders appealed against?

THIS was an appeal from two orders of the Vice-Chancellor Knight Bruce, affirming the orders of the Master, holding, first, that the defendant, Mr. Pim, was not liable as a contributory in his own right in respect of 40 shares in the above company; and, secondly, upon the amendment of the list of contributories that neither was he liable in his representative character.

Bacon in support of the motion.

Roswell Palmer objected that as the notice of motion was to discharge the Master's and Vice-Chancellor's orders, and for a declaration to insert the respondent's name in the list, "for

40 shares, or any less number of shares in his own right, or as representative of his father," it was irregular.

The Lord Chancellor held, that separate notices of appeal should have been given or the parties should have elected and given one notice against either decision, instead of the alternative.

The motion was therefore refused with costs; but leave was given to amend the notice, notwithstanding the objection of the respondent's counsel, that the three weeks allowed by the 12 & 13 Vict. c. 108, s. 33, had expired.

In re Shrewsbury Grammar School. Nov. 10, 1849.

GRAMMAR SCHOOL.—SIR W. ROMILLY'S ACT.—ENLARGEMENT OF SCHEME OF EDUCATION.

Held, (reversing the decision of the Vice-Chancellor of England,) that the Court has jurisdiction under the 52 Geo. 3, c. 101, to alter the scheme of a grammar-school by enabling the trustees to apply the surplus funds to the enlargement of the existing scheme of education.

THE Vice-Chancellor of England having dismissed a petition by the trustees of the Shrewsbury Grammar School, presented under the 52 Geo. 3, c. 101, on the ground that the Court had not jurisdiction under that act to alter the existing scheme as prayed, the trustees presented this appeal. (See 38 L. O. 291.)

The Solicitor-General and J. R. Kenyon, for the petitioners; Bacon and Glasse for St. John's College, Cambridge, the visitors; Wood and Wickens for the head master, Dr. Kennedy; Stuart for the Bishop of Lichfield; Roll, Blunt, and Wray, for other parties.

The Lord Chancellor held, that the 52 G. 3, c. 101, gave the Court jurisdiction to decree the alterations prayed by the trustees in the scheme of education by the application of the surplus funds to its enlargement, and directed a reference to the Master to consider and report thereon, with leave to the opposing parties to attend, subject to the future consideration of costs. The order of the Court below was therefore discharged.

Dec. 5, 6.—*Malcolm v. Scott*—Bill retained to allow plaintiff to bring action at law.

—5, 6.—*Elmhurst v. Spencer*—Injunction dissolved and plaintiff to bring action at law.

—6.—*Shrewsbury and Chester Railway Company v. Chester, Holyhead, and Birkenhead Railway Company*—Leave refused to insert appeal motion on cause paper of a day which was not a legal day.

—6.—*Ex parte Sturges, in re Kernot*— fiat annulled, and week allowed to give opportunity of presenting special case.

Dec. 7.—*In re St. Catherine's Hall, Cambridge, ex parte Goodwyn*—Petition dismissed, and petitioner held to have forfeited fellowship.

— 7.—*In re Berwick Grammar School*—Reference to the Master as to the appointment of new trustees.

— 8.—*Attorney-General v. Corporation of London*—Part heard.

— 6, 7, 10.—*Lassence v. Tierney*—Decree of Vice-Chancellor Wigram affirmed so far as related to the personality.

— 10.—*Salkeld v. Johnson*—Judgment as to costs.

— 10, 11.—*Shrewsbury and Chester Rail. Company v. Chester, Holyhead, and Birkenhead Railway Company*—Part heard.

Mails' Court.

Dec. 8.—*Salomons v. Laing and others*—Cur. ad. vult.

— 10.—*Robertson v. Skelton*—Stand over to Dec 20.

Vice-Chancellor of England.

Pearcy and others v. Dicker. Nov. 20, 1849.

EVIDENCE.—RECEIPTS FOR INTEREST SIGNED BY MARKSMAN.—AFFIDAVIT.

An affidavit stating that the mark, affixed to receipts for interest in the testator's hand-writing, was that of one of his creditors who was a marksman, held sufficient evidence of the payment of interest on account of a debt due to such creditor to prevent the operation of the Statute of Limitations.

This was an administration suit by three of the testator's creditors, and receipts for interest were produced in the testator's hand-writing, signed by one of the creditors as a marksman, on account of a debt due on a promissory note made in Sept. 1832, for the purpose of taking it out of the Statute of Limitations. It appeared from an affidavit that the creditor was a marksman, and that the mark in such note was his mark.

Bethell and Speed for the plaintiff; *Theod and Dickinson* for the defendants, objected to the sufficiency of this evidence.

The Vice-Chancellor, however, held, that the affidavit in support of the debt was sufficient, and the other debts not being disputed, made the decree as prayed.

In re Lancashire and Yorkshire Railway Company, ex parte Smith. Nov. 16, 1849.

LANDS' CLAUSES' CONSOLIDATION ACT.—MORTGAGEE'S COSTS.

Held, that the costs of mortgages, appearing on, but not opposing a petition for payment of dividends of money paid into Court for the purchase of an estate required for the purposes of a railway, are to be borne by the mortgagor, and not by the railway company.

This was a petition for the payment of the

dividends on a sum of money, paid into Court under the 8 Vict. c. 18, for the purchase of certain lands at Dewsbury Moor, required for the purposes of the above railway, to the petitioner, Benjamin Smith, for life, he having a life estate therein. The petition had been served on certain mortgagees, Messrs Price, Swann, and Gray.

M, A, Shee, in support of the petition, asked for the costs of the mortgagees who did not oppose, under the 8 Vict. c. 18, s. 80.

The Vice-Chancellor held, that the mortgagor, and not the railway company, should bear the costs of the mortgagees, who had consented to the payment of the dividends to the mortgagor.

Dec. 5, 6.—*Mathews v. Earl of Carlisle and others*—Injunction continued to restrain defendants from granting a gale for the purpose of working an iron mine.

7. *In re Lang, ex parte Price*—Judgment on construction of will.

— 7.—*Ewart and another v. Williams*—Injunction to restrain action at law for alleged damages sustained by the non-delivery of the same railway shares as had been delivered to plaintiffs to raise money upon.

— 8.—*In re Baylis's Trusts*—Judgment on construction of will.

— 10.—*Grand Junction Canal Co. v. Dimes*—Defendant committed for contempt for breach of injunction restraining him from obstructing the navigation of plaintiffs' canal.

— 11.—*Miles v. Darnford*—Injunction ex parte to restrain sale of houses.

— 11.—*Lee v. Hutton*—Motion discharged with costs to discharge former order.

Vice-Chancellor Knight Bruce.

Ex parte Hollingsworth and others, in re London and Eastern Railway Company. Nov. 3, 14, 1849.

ORDER FOR PAYMENT OF BALANCES TO OFFICIAL MANAGER UNDER 11 & 12 VICT. c. 45, s. 66.

Held, that in order to enable the Master to make an order for the payment of balances under the 66th section of the 11 & 12 Vict. c. 45, from "any contributory, trustee, receiver, banker, or agent," the company must be prima facie entitled; and therefore where such an order was made, and it did not appear that any of these characters existed, it was discharged.

This was a motion to discharge an order of Master Brougham, directing the appellants, Messrs. Hollingsworth, Tyerman, and Johnston, solicitors to the above company, to pay over to the official manager appointed under the 11 & 12 Vict. c. 45, a sum of £411 1s., the balance in their hands. The appellants were appointed solicitors to the company in Sept. 1845, jointly with Mr. Colantonia, but upon his bankruptcy Mr. Colantonia ceased to be so employed. A rough estimate had been made by the appellants of £6,000, as the probable

amount of their bills of costs, at the request of the directors, as the bills could not be prepared in time for a meeting of the shareholders, and that sum had been paid on account, together with 750*l.* for the bills of the company's country agents, which latter sum was subsequently returned. The joint bill of costs, amounting to 5,253*l.* 7*s.* 11*d.*, was on a reference allowed, and the appellants paid Mr. Colombine his share thereof. The appellants afterwards paid a sum of 205*l.* 11*s.* 1*d.*, leaving a balance in their hands of 541*l.* 1*s.*, which they claimed for their costs as sole solicitors to the company, after meeting any claims Mr. Colombine might establish in respect of a bill of costs which he had delivered, amounting to 857*l.* 8*s.*

Lloyd and Hetherington for the appellants; *J. V. Prior* for Mr. Colombine's assignees; *Swanston and W. T. S. Daniel*, for the official manager.

The Vice-Chancellor said, that the 66th section of the 11 & 12 Vict. c. 45, enabled the Master to require the payment of balances in the hands of "any contributory, trustee, receiver, banker, or agent," to which the company is *prima facie* entitled. The character of "contributory, receiver, or banker," clearly does not exist, and as to that of "agent," it appeared that the money had been received towards payment of claims, and was therefore received as an individual claiming to be a creditor and not as an agent. Neither did the appellants receive the money under any contract to the trustees thereof, for the company, but merely as on account of their debt. The company is not, therefore, in the words of the 66th section "*prima facie* entitled" to the 541*l.* 1*s.*, and the order of the Master will be reversed. The official manager to be allowed his costs out of the estate.

Dec. 5.—*Shrewsbury and Chester Railway Company v. Chester, Holyhead and Birkenhead Rail. Co.*—Injunction to restrain Station Committee from exceeding their powers.

—5.—*Esparte Lord, in re Lord and another*—Petition by consent to be dismissed without costs, on undertaking not to bring action.

—5.—*Esparte Wells, in re Wells*—Petition dismissed with costs.

—5.—*Esparte Brierly, in re Brierly*—Time allowed to file affidavits as to legal objections to fiat.

—6.—*Farebrother v. Beale*—Stand over in order to obtain the confirmation of the Commissioner to an arrangement.

—6.—*In re Patent Elastic Pavement and Kamptulicon Company, ex parte Andrews*—Stand over in order to allow petitioner to take proceedings at law.

—7.—*Attorney-General v. Gibbs*—New trustees' costs ordered to be paid out of charity estates.

—7.—*Faithful v. Gillett*—Decree on further directions.

—7.—*Hamberston v. Watson*—Stand over.

—7.—*In re Larne, Belfast and Ballymore*

Railway Company—Order for dissolution and winding up.

Dec. 8.—*Lett v. Randall*—Part heard.

—10.—*Wynn v. Shropshire Union Railway and Canal Company*—Stand over to April 16, 1850, for plaintiff to bring action.

Vice-Chancellor Wigram.

Vincent v. Bishop of Sodor and Man. Nov. 3, 5, 19, 1849.

ISSUE AT LAW.—CERTIFICATE, GROUNDS OF.

The Court of Chancery will not confirm a certificate from a Court of Law upon a legal question, where the grounds upon which the certificate proceeded are not stated; and therefore, where the Court of Common Pleas certified that a power was duly exercised by a will, without giving its reasons, the case was directed to be sent for the opinion of the Court of Exchequer.

By the marriage settlement of the late Dr. Ireland, Dean of Westminster, and his wife, power was given to the wife, upon the failure of issue of the marriage, to appoint certain leaseholds for lives, by deed signed and delivered in the presence of, and attested by, two witnesses, or by will signed and published in the presence of, and attested by, two witnesses. Mrs. Ireland had, upon the failure of issue, devised the leaseholds by will, attested by two witnesses, but not stated by the attestation clause to have been signed and sealed in their presence, or that it had been published. Dr. Ireland survived his wife, and upon his death, his executors claimed the property, on the ground that the appointment was invalid, the requisite of publication not being noticed in the attestation clause. The Court of Common Pleas had, however, upon a case directed to them, certified, that the will was a due execution of the power, but without assigning its reasons.

Malins and Bacon for the executors; *Hampshy and Hialop Clarke*, for the defendants, the appointees of Mrs. Ireland.

Cw. ad. vult.

The Vice-Chancellor said, that the certificate of the Court of Common Pleas could not be confirmed without the Court knowing the ground upon which their decision had proceeded, as it would then in fact be deciding the legal question. The case might therefore be sent for the opinion of the Court of Exchequer.

Dec. 6.—*Evans v. Protheroe*—Motion granted for new trial of issue as to payment of money, independently of evidence of an insufficiently stamped receipt.

—8.—*Thomas v. Thomas*—In administration suit, order for transfer of stock into Court, and reference as to debts.

—8, 10.—*Girdlestone v. Creed*—Reference in administration suit as to testatrix's estate and legacies—Costs reserved.

—8, 10.—*Curtis v. Fellbrook and others*—Reference as to classes of children specified in will, and for receiver.

Dec. 6, 7, 10, 11.—*Griffiths v. Lancel, Griffiths v. Ricketts*—Cur. ad. vult.

— 11.—*Speakman v. Speakman*—Part heard.

Court of Queen's Bench.

Pratt v. Hasbury. Nov. 3, 1849.

PLEA.—AMENDMENT.—JUDGE AT NISI PRIUS.—JURISDICTION.

Upon motion for new trial, on the ground of the improper amendment in a plea, held, that the judge at Nisi Prius has power under the 2 & 3 Wm. 4, c. 42, s. 23, to allow an amendment not material to the merits of the case or prejudicial to the opposite party, in conducting the case.

THIS was a motion for a new trial, on the ground of the improper amendment in the second plea. The action was in trespass for falsely and maliciously giving the plaintiff in custody for felony, to which, the defendant pleaded not guilty, and a justification on the ground that some person unknown had stolen certain of the defendant's goods, and the plaintiff had received them, knowing them to have been so stolen. It appeared that one of the defendant's servants, John Press, had left a barrel of ale at the plaintiff's house, without its being ordered, and duly entered as sent to one of the customers; but on the trial at the Central Criminal Court, the plaintiff and John Press were acquitted, whereupon this action was brought. At the trial of the action before Deaman, L. C. J., at the Middlesexittings after Trinity Term last, his lordship had, upon an objection to the sufficiency of the second plea, directed the name of "John Press" to be inserted for "some person unknown."

E. James in support of the motion, cited *David v. Preece*, 5 Q. B. 440; *John v. Currie*, 6 Car. & P. 618; *Bowers v. Nixon*, 2 Car. & K. 372.

The Court held, that the 2 & 3 Wm. 4, c. 42, s. 23, enabled the judge at Nisi Prius to allow any amendment to be made, which would not be material to the merits of the case, or prejudicial to the opposite party in conducting his case. The rule would therefore be refused.

Regina v. Inhabitants of All Saints, Derby. Nov. 14, 1849.

IRISH PAUPERS.—ORDER OF REMOVAL.—BIRTH-SETTLEMENT.

The pauper children of Irish parents born in an English parish, were held to be removable to the place of birth, where the mother was dead, and the father, having deserted them, could not be summoned before the justices in compliance with the 8 & 9 Vict. c. 117, prior to the children's removal under that act in Ireland.

AN order for the removal of the two pauper children of Irish parents, from the parish of All Saints, Derby, to the township of Sheffield, the place of their birth, having been quashed on appeal to the Quarter Sessions, subject to the opinion of this Court, upon the question,

whether in consequence of the death of the children's mother and the desertion of them by the father, they could, under the 8 & 9 Vict. c. 117, be removed to Ireland.

Pashley appeared in support of the order of sessions; *Whitehurst*, Q. C., and *Boden*, in support of the order of removal to the place of birth.

The Court said, that the father's desertion of the children must be taken to imply an entire separation between them, and as the mother was dead, the rule in *Rex v. Cottingham*, 7 B. & C. 615, of next ascertaining her maiden settlement, did not apply. All English-born children have *prima facie* a settlement in the place of their birth, subject, nevertheless, to be defeated by showing that either of the parents had gained a settlement. Then, as to the effect of the 8 & 9 Vict. c. 117, as amended by the 10 & 11 Vict. c. 33, it appeared that it was necessary in the first place for the Irish parent to be summoned before the justices. In this case, however, as the father could not be found, it was impossible to comply with the requisites of the statute, and the children must therefore be removed to the place of their birth-settlement.

Dec. 5, 6.—*Evelyn v. Worsfold and wife*—Cur. ad. vult.

— 7.—*Brough v. Eisenberg*—Rule for distraingas discharged with costs.

— 7.—*Palmer and another v. Welch*—On demurrer, judgment for the plaintiff.

— 7.—*Steele v. Hoe*—Part heard.

Queen's Bench Practice Court.

Harrison v. Newton. Nov. 19, 1849.

DISCHARGE FROM CUSTODY UNDER CA. 34.—FRAUD.

Where a discharge from custody under a ca. ss. was obtained by fraud and misrepresentation: Semble, it will not operate as a discharge from the debt.

THIS was a motion for a rule to rescind a discharge of 10th July last, and to issue another ca. ss. on the ground that the discharge was obtained by fraud and misrepresentation, and for the payment of the sum of 104*l.*, the amount of the judgment. It appeared that the defendant, Augustus Newton, a barrister, was taken under a ca. ss. on July 10, and that the plaintiff called at the lock-up house, where the defendant was, and that the defendant said he would be discharged as a matter of course on the 11th, on the ground of privilege. The plaintiff then pressed for payment, when the defendant promised, that if he would sign a paper, he should be paid part of the money on the 11th, and the remainder by instalments. The plaintiff signed the paper on the assurance of the defendant's promise to pay, and that it would not prejudice him. The defendant was immediately discharged, but the money still remained unpaid.

Rogers in support of the rule, cited *Baker v. Ridgway*, 2 Bing. 41.

The Court granted the rule, and said, that the discharge would not operate as a discharge of the debt, but as it appeared the arrest was wrongful, and might have been discharged by application to the Court, it was doubtful whether the latter part of the rule could be sustained.

Common Pleas.

Westropp and another v. Solomon. Nov. 7, 1849.

FORGED SCRIP CERTIFICATES.—STOCK-BROKERS.—LIABILITY OF PRINCIPAL.

Where stock-brokers had sold railway scrip certificates, which were subsequently discovered to be forged, and in accordance with a resolution of a stock exchange committee, had paid to the purchasers the price of genuine scrip, at the then present price: Held, that they were, notwithstanding, only entitled to recover from the defendant, who had employed them to sell such forged scrip, the amount actually paid by the purchasers—the transaction being bona fide, and no warranty of genuineness given or implied.

THIS action was brought by the plaintiffs, who were stock and share-brokers, and members of the Stock Exchange, against the defendant, to recover the sum of 1,300*l.*, which they had paid in accordance with a resolution of a committee of the Stock Exchange, to the purchasers of certain scrip certificates in the Buckingham, Oxford, and Bletchley Railway Company, and which were subsequently discovered to be forged. It appeared that the defendant had been applied to to lend money on the scrip, and had, upon inquiring of the plaintiffs as to the genuineness, advanced the money. The defendant then employed the plaintiffs to sell the scrip, which they accordingly did, and paid the sum of 487*l.* 10*s.* less their commission to the defendant. The plaintiffs having paid the sum of 1,300*l.*, the then difference in the price of the shares, in lieu of procuring the purchasers genuine scrip, called on the defendant to reimburse them. The defendant paid the sum of 487*l.* 10*s.* into Court. The action was tried at the London Sittings after Hilary Term, 1847, before L. C. J. *Wilde*, when a verdict was entered for the plaintiffs, with 1,300*l.* damages, subject to a special case. *Haggins*, for the plaintiff, cited *Brittain v. Lloyd*, 14 M. & W. 762; *Cowling* for the defendant.

The Court held, that the defendant was only liable to refund the money which he had received for the purchase of the scrip. Both parties, it appeared, had acted bona fide, and had not warranted the genuineness of the scrip. The purchasers of the forged scrip had only a right to annul the contract, but not to require genuine shares, and therefore the defendant, as principal, was liable to the same extent only as the plaintiffs had duly and properly paid in the discharge of their employment, and the resolution of the Stock Exchange Committee could not affect the question.

Dec. 5.—*Stebbins v. Spicer*—Rule absolute for new trial.

— 5.—*Gladstone v. Stansfield and others*—Rule absolute for new trial.

— 6.—*Lord v. Hall*—Rule discharged to enter verdict for defendant, or for new trial.

— 6.—*Fish v. Kempton*—Rule discharged for Master to review his taxation.

— 7.—*Van der Donckt v. Theilsson*—Rule for new trial discharged.

— 7. 8.—*Doe d. Strickland v. Strickland*—Rule discharged for new trial.

— 10.—*Morgan and another, executors, v. Earl of Aberghenny*—Rule discharged for new trial.

— 10.—*Dreans and another v. Connolly*—Rule for new trial discharged.

— 10.—*Thompson v. Wesleyan Newspaper Association*—Rule discharged to set aside verdict.

Court of Exchequer.

Attorney-Gen. v. Shillibeer. Dec. 4, 5, 1849.

COSTS ON CROWN ON INFORMATION UNDER POST HORSE DUTIES' ACT.

A rule was made absolute on the Queen's Remembrancer, to review his taxation of costs, in an information under the 2 & 3 Wm. 4, c. 120, so far as related to the allowance of costs of witnesses, whose evidence was not required for the two counts on which the Crown was successful; but was discharged as to the allowance of the costs of the solicitor of Inland Revenue for attendance, &c., although he was paid by fixed salary.

THIS was an information under the Post Horse Duties' Act, 2 & 3 W. 4, c. 120, for frauds in omitting to make correct entries in the returns under that act, of duties payable to the Crown in respect of post-horses, &c., and judgment was given for the Crown, upon one penalty out of 20, under the 2nd count, and under the 6th for the wilful and fraudulent undercharge of duty. The Queen's Remembrancer, in taxing the costs, had allowed the costs of all the witnesses, and of the solicitor of Inland Revenue, as between party and party.

A rule nisi having been obtained on the 23rd November last, calling on the Queen's Remembrancer to review his taxation, on the grounds, 1st, that the Crown was not entitled to charge for the attendances of the solicitor of Inland Revenue, inasmuch as he was paid by fixed salary, and that therefore, the Crown was not put to any expense by reason thereof; and 2nd, that the Crown was not entitled to full costs of suit, as if all penalties sought had been recovered, but only of those witnesses whose evidence related to the counts upon which the Crown had succeeded.

The Attorney-General and J. *Wilde* showed cause against the rule, which was supported by *Lush*.

The Court made the rule absolute on the 2nd count; and, after taking time to consider,

discharged the rule on the 1st objection. It was not true the Crown incurred no expense in prosecuting this case, and the arrangement entered into with their solicitor to remunerate him and his clerks by fixed salary, was intended for the public benefit. It did not follow that the Crown must lose their costs, allowed under the 2 & 3 Wm. 4, c. 120, s. 101, because they could not prove the outlay, and the rule on this point must be discharged.

Dec. 5.—*Cherry v. Hamming and another*—Rule: discharged to enter nonsuit or for new trial.

—5.—*Gropes v. Bunney*—Rule absolute for new trial.

—5.—*Webster v. Planché*—On demurrer, plea to be amended by consent.

—6.—*Higginbotham and others v. Burge*—On demurrer, judgment for the defendant.

—7.—*Hutchinson, administrator, v. York, Newcastle, and Berwick Railway Company*—Cur. ad. vult.

—7.—*Regina v. Ellis*—Cur. ad. vult.

—8.—*Goode v. Thompson*—Leave to amend declaration.

—10.—*Sharrod v. London and North-Western Railway Company*—Rule absolute to enter nonsuit.

Court of Exchequer Chamber.

Dec. 8.—*Regina v. Hey*—Conviction quashed, on the ground that the prisoner was not the prosecutor's servant, as stated in the indictment.

Court of Bankruptcy.

(*Coram* Mr. Commissioner Holroyd.)

In re Gibson. Nov. 6, 1849.

BANKRUPT LAW CONSOLIDATION ACT.—ANNEXING PROCEEDINGS AGAINST PARTNERS IN ONE PROCEEDING.

Held, that the 12 & 13 Vict. c. 106, s. 98, applies only to the annexing of proceedings in bankruptcy against partners, and a subsequent proceeding against another partner, but not to two distinct facts.

Lawrance applied in this case, that the fiat issued against Mr. Start, the partner of Mr. Gibson, in the St. Alban's Bank, should be amended to and form part of the proceedings under this fiat, according to the 98th section of the 12 & 13 Vict. c. 106, which enacts, that in case of a second or other petition against one or more members of a firm, the same shall be pro-

secuted in the Court in which the first was prosecuted, and form part of the proceedings then under, or the senior Commissioner may direct that they be proceeded in separately or in conjunction.

Bagley and Linklater; contra.

The Commissioner held, that the 98th section referred only to the case of a fiat or petition for adjudication against one or more partners, and where a subsequent fiat or petition for adjudication was issued against another member of the same firm, but that it did not apply to the present case, in which two fias had been issued, and therefore refused the application.

In re Bush. Nov. 14, 1849.

BANKRUPT.—SUSPENSION OF CERTIFICATE.—VEXATIONOUSLY DEFENDING ACTION.

A bankrupt's certificate was suspended for four months, where he had vexatiously defended an action on a bill of exchange, whereby the opposing creditor had incurred 72l. costs.

THE bankrupt, William Bush, a builder, of Kentish Town, came up for his certificate.

Fisher opposed for Mr. Thomas Dobson, a creditor, on the ground that he had vexatiously defended an action on a bill of exchange, by refusing to acknowledge his hand-writing, and had thereby put Mr. Dobson to an expense of 72l.

The Commissioner suspended the certificate for four months, and said that the Court would always visit with censure the improper defence of an action.

(*Coram* Mr. Commissioner Fomblesque.)

In re Hodson. Nov. 14, 1849.

EXTRAVAGANT PERSONAL EXPENSES.—2ND CLASS CERTIFICATE.

Where the bankrupt's expenses bore a great disproportion to his business profits, the certificate was suspended for six months, and was then to be of the 3rd class, although his books were well kept.

THIS was an application by H. F. Hodson, an ironmonger, of Romford, for his certificate. The debts amounted to 2,962l., of which 2,600l. he owed his father.

The application was unopposed.

The Commissioner said, that as the bankrupt's personal expenses were greatly disproportionate to the profits of the business, the certificate would be suspended for six months, and would then be a third class one, although his books had been well kept.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

CONSTRUCTION OF STATUTES.

ATTORNEY'S APPOINTMENT.

Corporation seal unnecessary.—Where a private act of parliament, constituting a railway

company, provides that the directors may "appoint or displace any of the officers of the company;" the appointment of an attorney to the company need not be under seal. *Regina v. Justices of Cumberland*, 5 D. & L. 431, s.

CANAL COMPANY.

Coppyholder's conveyance, under act.—A canal company was authorized by statute 32 Geo. 3, c. 80, to purchase land, on voluntary or compulsory sale by the persons interested (at prices to be agreed upon, or ascertained by commissioners or a jury); and a form of conveyance was prescribed, purporting that the party granted all his "right, title, and interest, to and in the same, and every part thereof, to hold to the said company for ever." The company were authorized to enter upon payment of price, or tender, &c.; and were made liable to render compensation for damage done by their works, &c., if claimed within six months. A copyholder in fee executed a conveyance in the statutory form to the company, who paid him the price, and entered: *Held*, by the Court of Exchequer Chamber, That this conveyance passed only such interest as the copyholder could convey without the lord, and that, on the copyholder's death, no other person having been admitted, the lord might seize quousque for want of a tenant, and maintain ejectment, and an action for mesne profits, against the company.

That, the copyholder having devised generally his property called *F.*, which comprehended the land in question, subject to payment of his debts, and other payments, the legal title to the land in question did not pass to the devisee, but descended to the copyholder's heir at law.

That, in an action by the lord against the company, for mesne profits, it appearing by special verdict that the steward had made a warrant of seizure, commanding the bailiff, generally, "to seize" the land "into the hands of the lord of the manor," and the bailiff did, in pursuance of the warrant, seize into the hands of the lord until a tenant should come in and be admitted, this must be considered a seizure quousque.

That, in order to entitle the lord so to seize, there ought to be proclamations at three consecutive courts baron. But that, when, in an action by the lord in his own name for mesne profits, a special verdict found a custom to seize after three consecutive courts baron, and that there had been a recovery in ejectment on the lord's demise, (which recovery was not put on the record by way of estoppel,) and that proclamation had been made in three courts, but it was not found whether they were, or were not, consecutive, it must be considered that the proclamations were regular, though the jury would have been at liberty to find the contrary. *Dimes v. Grand Junction Canal Company*, 9 Q. B. 469.

Lord's case, 8 Rep. 39 a; 100 b; *Lord Kensington v. Mansell*, 13 Ves. 240; *Trotter v. Blake*, 2 Mod. 279.

CLERK TO JUSTICES.

Compensation.—Stat. 5 & 6 Vict. c. 111, confirming the charters of incorporation of certain boroughs including Manchester, enacts, (sect. 2.) "that every officer of any such borough, or of any county or any division of a county in which any such borough is situated, who was in any office of profit at the time of the granting of any such charter," "whose office shall have been abolished, or who shall have been removed from his office, or who shall have been deprived of any part of the fees and emoluments of his office, in consequence of any such grant, shall be entitled to have an adequate compensation, to be assessed by the council and paid out of the borough fund, for the salary, fees, and emoluments of the office which he shall so cease to hold, or for such part thereof as he shall have been so deprived of, regard being had to the manner of his appointment to the said office and his term or interest therein, and all other circumstances of the case;" and incorporates the provisions of stat. 5 & 6 Wm. 4, c. 76, relating to the claim of any corporate officer for compensation.

A mandamus to the council of Manchester recited grants of a charter of incorporation, separate commissions of the peace, and separate court of quarter sessions to that borough. That *M.* was an officer of the Manchester division of the county of Lancaster, in which division Manchester was situated; "that is to say, holding the several offices of clerk to the magistrates for the county of Lancaster, acting for the said division of Manchester, otherwise called clerk to the justices of the petty sessions held for the said division, and clerk to the justices for the time being, appointed under statute 53 Geo. 2, c. 72," whose respective sittings were holden, &c. in Salford; that these offices were offices of profit, and *M.* had enjoyed emoluments therefrom; and that he had been deprived of part of the emoluments in consequence of the grants, and had claimed and been refused compensation. The writ then commanded the council to assess compensation. Return: That *M.* was not an officer of a division of the county, and had not been deprived of his emoluments, as alleged. Issues thereon.

On the trial, it appeared that a stipendiary magistrate had been appointed for Manchester under stat. 53 Geo. 3, c. 72; that, both before and after that appointment, the greater part of the business of petty sessions had been transacted at Salford, first, by some justices of the division, and, after the appointment of the stipendiary magistrate, by him together with some such justices; but some other business of petty sessions within the division was also transacted at the two other places aforesaid. *M.* had always acted as clerk to the magistrates and stipendiary magistrate at Salford, but not at the two other places, other persons having there acted as clerks. Loss of emolument in consequence of the grants was proved.

Cases cited in the judgment: *King v. Dilliston*, 1 Salk. 306; 1 Lutw. 76 a; 1 Show. 31, 83; *Cartwright*, 45; 3 Mod. 221; *Combertuck*, 118; *Re v. Steinforth* and *Kendy Canal Company*, 1 M. & S. 33; *North v. Earl of Stamford*, 3 F. Wm. 148; *Doe d. Tarrant v. Holtier*, 3 T. R. 162; *Doe d. Boverv. Trueman*, 1 B. & Ad. 746; *Earl of Salisbury's case*, 1 Lev. 63; *Underhill v. Kelsey*, Cro. Jac. 396, Sir R. Lech-

Held, that the *jurors* in the return were sustained. And, the judge having left to the jury whether *M.* was a clerk to the justices of the division and to the stipendiary magistrate, and the jury having found in the affirmative, and a verdict having been entered for the Crown, a new trial was directed.

Quere, whether the office of clerk to the justices of petty sessions be within either stat. 5 & 6 Vict. c. 111, s. 2, or stat. 5 & 6 Wm. 4, c. 76, s. 66. *Regina v. Council of Manchester*, 9 Q. B. 458.

COALS.

Non-delivery of ticket.—A statute (1 & 2 Vict. c. ci, s. 3) enacted, "that, with any quantity of coals exceeding 560 lbs. delivered by any cart, waggon, or other carriage, within the cities of London and Westminster, or within 25 miles from the General Post-office, the seller should deliver or cause to be delivered to the purchaser, or to his agent or servant, immediately on the arrival of the cart, waggon, or other carriage in which such coals should be sent, and before any of such coals should be unloaded, a ticket, according to a certain form; and that, in case any such seller should not deliver or cause to be delivered such ticket as aforesaid to the purchaser of such coals, or to his agent or servant, before any part of such coals were unloaded, every such seller should, for every such offence, forfeit and pay any sum not exceeding 20*l*." By the form given, the ticket was required to be "signed" with the name or names of the seller or sellers, and that of the carman, in words at full length: *Held*, that the neglect to deliver such ticket might be pleaded in bar to an action for the price of the coals. *Cundell v. Dawson*, 4 C. B. 376.

Cases cited in the judgment: *Little v. Poole*, 9 B. & C. 192; *Law v. Hodson*, 11 East, 300; *Bensley v. Bignold*, 5 B. & Ald. 335; *Langton v. Hughes*, 1 M. & S. 595; *Cannan v. Bryoe*, 3 B. & Ald. 179; *Forster v. Taylor*, 5 B. & Ald. 887; *Marshall v. Evans*, 3 J. B. Moore, 114; *Rex v. Inhabitants of Gravesend*, 3 B. & Ald. 240; *Cope v. Rowland*, 2 M. & W. 149.

COMPENSATION.

See *Clerk to Justices; Local Act; Railway Company*, 2.

CONTRACT VOID BY STATUTE.

A contract entered into in contravention of a statutory provision, whether the prohibition is express, or is implied from the imposition of a penalty, will not support an action. *Cundell v. Dawson*, 4 C. B. 376.

COPYHOLD.

Infant.—*Forfeiture*.—*Seizure quousque*.—Statute 11 Geo. 4 and 1 Wm. 4, c. 65, s. 9, enacting that no infant shall forfeit copyhold land for his neglect or refusal to be admitted, does not prevent the lord from seizing *quousque*.

So *held* by the Court of Exchequer Chamber, reversing the judgment of the Court of Queen's Bench. *Dimes v. Grand Junction Canal Company*, 9 Q. B. 469.

See *Canal Company*.

ELECTION.

Returning officer.—*Refusal to admit vote*.—In case against a returning officer for refusing to admit the plaintiff's vote at an election of a borough member, the first count, after stating the writ and precept for the election, alleged that the plaintiff was a burgess; that his name was on the register of voters; that he tendered his vote for one of the candidates, and answered in the affirmative the questions authorised by the 6 & 7 Vict. c. 18, s. 81, to be put by the returning officer, and was ready and offered to take the oath prescribed by sect. 82, but that the defendant, being returning officer, *wrongfully, fraudulently, and wilfully intending to injure the plaintiff*, and to hinder and disappoint him of his privilege of and in the premises, refused to permit the plaintiff to give his vote, or allow the same to be entered and recorded, and that a burgess was elected, the plaintiff being so excluded from giving his vote.

The second count, after stating the writ and precept, and that the plaintiff was a burgess, and on the register,—proceeded to allege that he tendered his vote for one of the candidates: that it was the duty of the defendant, as being such returning officer, to allow such vote to be entered and recorded and cast up in the poll-books; that he was requested so to do, but that he, contriving and *wrongfully, and fraudulently, and wilfully, and maliciously intending to injure and damage the plaintiff*, and to hinder and disappoint and deprive him of the benefit of his right and privilege aforesaid, instead of entering and recording the plaintiff's vote in the poll-books, to the end and intent aforesaid, refused so to receive the same, or to admit and allow the same to be so entered and recorded, to the end and intent aforesaid; but, on the contrary thereof, caused the vote of the plaintiff to be entered in the column of *votes tendered*, in the poll-books, and, at the close of the poll, refused to reckon, include, and cast up, and did not reckon, &c., the plaintiff's vote among the votes given for that candidate; *whereby* the plaintiff was deprived of the benefit of his right to vote at the election.

The third count—after stating the writ and precept, that the plaintiff was a burgess and on the register, and that he tendered his vote—alleged that it was the duty of the defendant, as returning officer, to enter the vote on the poll-books without entering into or allowing a scrutiny; but that the defendant, knowing the premises, but contriving and *wrongfully, fraudulently, wilfully, and maliciously intending to injure and damage the plaintiff*, and to delay him in the exercise of his privilege of voting, and deprive him of the benefit of his said privilege, *wrongfully* ordered and allowed a scrutiny to be held with regard to the plaintiff's vote, and his right and qualification to vote, and *wrongfully* took upon himself to adjudge and determine, at and after such scrutiny, so ordered and allowed, that the plaintiff was not entitled to give, and had no qualification enabling him to give, his vote at that election; *whereby* the plaintiff was delayed, hindered,

and obstructed in the exercise of his said privilege of voting, and a burgess was elected for that parliament, the plaintiff's vote being so hindered, &c.: *Held*, that, though the defendant, in refusing to admit the vote of the plaintiff, had mistaken his duty as returning officer, and had acted in contravention of the 32nd section of the 6 & 7 Vict. c. 18, and may have thereby subjected himself to a criminal prosecution for the breach of a public duty, yet that the rejection of the vote could not be made the ground of a civil action at the suit of the person rejected, that person having, in fact, become disqualified to vote, by reason of non-residence. *Fryce v. Boleker*, 4 C. B. 866.

REASON FOR DELAY.

An affidavit, in support of a motion under the 8 & 9 Vict. c. 66, s. 5, to quash a writ of error for wilful delay, stated, that since the issuing and filing of the writ of error, "no process, or other proceeding, has been had, or taken," by or on behalf of the said defendants, to prosecute the same: *Held* sufficient, without stating that the defendants had not assigned errors, or that the defendants had been ruled to assign errors.

It is not necessary, in order to proceed under the 8 & 9 Vict. c. 66, s. 5, to quash a writ of error for delay, that the defendants should have been previously ruled to assign errors. *Reg. v. Broome*, 5 D. & L. 607.

EXECUTION UNDER £20.

The Court refused to permit execution to issue notwithstanding a writ of error, the notice of allowance stating the ground of error to be that the defendant had set forth the award of a *ca. sa.* for costs of a nonsuit, since the 7 & 8 Vict. c. 96, s. 57, which prohibits a person from being taken in execution where the sum recovered does not exceed 20*l.* *Newton v. Lord Conyngham*, 5 D. & L. 762.

FRIENDLY SOCIETY.

Election of treasurer.—By the rules of a friendly society, inrolled under the 10 G. 4, c. 56, the power of electing a treasurer and other officers, was vested in a committee of eleven. At a meeting of the committee, at which ten of the members only were present,—the eleventh not having received notice,—the defendant, the former treasurer, was removed, and the plaintiff appointed in his stead, by a majority of votes: *Held*, that the election was void, although the absent committee-man had, for a considerable period, ceased to attend the meetings, and had intimated an intention not to attend any more, and although the defendant himself had demanded a poll: *Roberts v. Price*, 4 Q. B. 231.

Cases cited in the judgment: *Rex v. Langhorne*, 4 Q. B. 558; 6 N. & M. 203.

HIGHWAY.

The words in the General Highway Act, 5 & 6 Wm. 4, c. 50, s. 85, "quarter sessions" "holdings" the limit within which the said high-

way "shall be," means the quarter sessions held for the "county, riding, division, shire," &c., in which the highway is situate; and not a mere adjournment thereof, held within a particular division.

Therefore, where the quarter sessions for the county were held within one division, and afterwards by adjournment within three other divisions, and on an appeal under the 88th section of the General Highway Act, the notice of appeal was given 10 clear days only before the adjourned sessions at which the appeal was to be tried, and within which the highway was situate, and not 10 clear days before the first holding of the sessions; and the sessions declined to hear the appeal, on the ground that the notice had not been given in time; this Court refused to grant a mandamus compelling them to enter continuances and hear the appeal. *Regina v. Justices of Suffolk*, 5 D. & L. 558.

HIGHWAY RATE.

Local act.—By a local act for the improvement of a particular portion of a parish, it was provided that every inhabitant or owner who should be assessed for the rates made under that act for any lands or tenements within the limits of the act, should be released and free from all rates and assessments towards the paving and lighting any other street, road, or place within the parish, in respect of such lands or tenements: *Held*, that this did not exempt an occupier of premises assessed within the local district from being assessed in a general highway rate imposed upon the whole parish, although a portion of such rate might be expended in paving parts of the parish out of the district. *Richardson v. Tubbs*, 4 C. B. 304.

HUSBAND AND WIFE.

1. *Verification of acknowledgment taken abroad*—In the case of an acknowledgment taken abroad, the Court will not dispense with an affidavit of verification sworn and authenticated according to the local law, unless it be distinctly shown that great inconvenience would result from a strict adherence to the ordinary rule. *Crawford, in re*, 4 C. B. 626.

2.—*Certificate of acknowledgment rejected.* The Court refused to allow a certificate of acknowledgment by a feme covert, under the 3 & 4 Wm. 4, c. 74, to be filed, where it appeared from her answers to the inquiry of the commissioner as to whether she intended to give up her interest in the estate, without any provision being made for her in lieu thereof, that the consideration for her consent was a provision made for her by her husband's will,—although it was shown, by another affidavit, that she perfectly understood that to be no provision, inasmuch as the will was revocable. *Dixon, in re*, 4 C. B. 631.

INFANT.

See *Copyholds*.

INFERIOR COURT.

See *Jurisdiction*.

INSOLVENT.

1. *Vesting order*.—Under the 1 & 2 Vict. c. 110, s. 55, a vesting order is "an order appointing an assignee" of the prisoner, in pursuance of the act, within the meaning of that section. *Smith v. Wetherell*, 5 D. & L. 278.

2. *Sequestration of benefice*.—The provisional assignee of an insolvent prisoner, in whom the estate and effects of a prisoner are vested by an order of the Insolvent Debtors' Court, under the 1 & 2 Vict. c. 110, s. 37, may apply for and obtain a sequestration of the profits of the prisoner's benefice, under the sect. 55 of that statute. *Smith v. Wetherell*, 5 D. & L. 279.

3. *Arrest*.—Where the defendant was arrested on the 26th of August, and the application was made to set aside the writ on the 6th of November, without explanation of the delay upon the defendant's affidavits; and it appeared upon the affidavits in opposition to the rule, that two similar applications had already been made to a judge at chambers, and refused: *Held*, too late. *Parker v. Bayley*, 5 D. & L. 296.

4. *Protection expired*.—Where, upon the hearing of the insolvent prisoner's petition, who had obtained an interim order for protection from arrest, under 7 & 8 Vict. c. 96, the Commissioner, under section 24, refused a day for his final order, on the ground of fraud, in contracting a debt; but did not remand him to his former custody, as authorized by that section: *Held*, that the time limited for his protection by the interim order having expired, the plaintiff, one of his detaining creditors, might, under the 6th section, issue a fresh writ of *ca. sa.* and arrest him under it. And that no *sci. fa.* was necessary to revive the judgment.

Quere, if such writ should recite the circumstances under which it issues. If it does not, it is an irregularity merely, and may be waived by lapse of time. *Parker v. Bayley*, 5 D. & L. 296.

Cases cited in the judgment; Reports Postscript, 2 D. & L. 650; 13 M. & W. 622.

INTERPLEADER.

1. *Property in goods as against an execution creditor*.—*Lea*.—Goods in the possession of A. having been taken in execution at the suit of B. against C., an interpleader issue was directed, to try whether A. (plaintiff in the issue) had any property in the goods as against B. (defendant in the issue).

Held, that the issue on the plaintiff's part was maintained by shewing a lien on the goods for money due to him from C. *Rogers v. Kewney*, 9 Q. B. 592.

Cases cited in the judgment: Legg v. Evans, 6 M. & W. 36.

2. *Sheriff's rule*.—On the 16th of January, 1847, the sheriff seized certain goods and moneys of the defendant, under a *testatum f. fa.*, the net proceeds of which he handed over to the plaintiffs in part satisfaction of their

judgment. He at the same time seized certain which, not being due, he retained. On the bills of exchange and a promissory note, the 2d of February, he received notice that a fiat in bankruptcy had issued against the defendant. On the 4th, he was ruled to return the writ; and, on the 11th, he returned what he had done under the writ. On the 18th, he received notice that assignees had been appointed; and the bills and note were then claimed on their behalf. After some negotiation with the solicitor to the fiat, the sheriff took out an interpleader summons on the 29th of April: *Held*, that he had by his laches disentitled himself to relief. *Mutton v. Pountney*, 4 C. B. 371.

3. *Sheriff—Costs*.—The sheriff, on the 20th of May, entered for the purpose of making a levy upon the goods of B., under a *fi. fa.* at the suit of A. Finding that B.'s person and property were protected by an order of a Commissioner of bankrupts, under the 7 & 8 Vict. c. 96, the sheriff withdrew. On the 21st, C. purchased the goods from the official assignee; and, on the 3rd of June, B.'s petition having been dismissed, the sheriff, who had been ruled to return the writ, entered a second time for the purpose of making a levy. Being there met by C.'s claim, the sheriff obtained a judge's order, directing an issue under the Interpleader Act, to try whether or not the goods seized by him were, at the time of the second levy, the property of C. The plaintiff thereupon obtained a rule, calling upon the sheriff and C. to show cause why that order should not be set aside, on the ground that the sheriff had by his laches, in not applying on the 20th of May, precluded himself from the benefit of the Interpleader Act; or why the order should not be amended, by substituting the date of the first, for that of the second levy. The Court made absolute the rule for setting aside the order, but directed that A. should pay C.'s costs of appearing on the rule, inasmuch as the appearance of C. was necessary for the purpose of opposing an amendment, the effect of which would have been, to require him to sustain a title he had never set up. *Crimp v. Day*, 4 C. B. 760.

4. *Exercising a discretion*.—The sheriff is not entitled to call upon parties to interplead, where he has already exercised a discretion in the matter. *Crimp v. Day*, 4 C. B. 760.

JOINT-STOCK COMPANY.

Registering charge.—The senior Master of the Common Pleas having declined to register a memorandum to charge real estate, belonging to a past member of a joint-stock banking company, (against the public officer of which a verdict had been obtained,) pursuant to the 1 & 2 Vict. c. 110, s. 19, and the 3 & 4 Vict. c. 82, s. 2; the Court refused to compel him to receive the memorandum. *Esparte Ness*, 5 D. & L. 339.

[This Section of the Digest will be concluded in our next number.]

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, DECEMBER 22, 1849.  
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TAXES ON THE ADMINISTRATION OF JUSTICE.

SUBSTANCE OF THE REPORT OF THE COM-
MITTEE OF THE HOUSE OF COMMONS.

THE time is evidently fast approaching for the abolition of many at least of the taxes upon justice. Lord Erskine had the honour of originating the measure, by which the stamps upon law proceedings were abolished. Lord Lyndhurst and Lord Langdale have strongly condemned the larger part of the taxes upon the suitors, to pay the judicial and official establishment for administering justice. It remains for the present Lord Chancellor and the Attorney and Solicitor-General, to carry out the just principle which their predecessors have established.

Practically, the principle, though recognised by the eminent authorities we have mentioned, has not yet made much progress, except in the repeal of the Stamp Duties on Law Proceedings. We trust it will be the honourable task of Sir John Romilly, the Chairman of the Committee of the House of Commons on "Fees in Courts of Law and Equity," to achieve the greatest and most important of all Law Reforms—the annihilation of the enormous taxes on justice.

We entertain strong hopes on this subject on the perusal of the Report of the Select Committee, which has just been printed, under an order of the House of Commons of the 25th July last. Our readers will be gratified to ascertain the pith of the important amendments which the Committee recommend to the adoption of the House—the justice of which will doubtless please them, and the enactments for which cannot fail sooner or later to be adopted.

The Report brings a large body of facts before the profession and the public, and

whilst we hail the proposed improvements, we trust others of still greater moment will follow at no distant time. The alterations at present recommended will simplify the proceedings of the Court, save much of the time and trouble of the practitioner, and partially relieve the suitor; but the great object to be ultimately effected will be the payment of the salaries of the judges and officers, and all the expenses of the Court and its official machinery from the funds of the State instead of the suitor.

It is stated in the Report, that "from the earliest period it appears that the payment of fees by suitors in Courts of justice, has been incidental to all legal proceedings. These fees were paid when any step was taken in a cause, and were received by the particular officer of the Court, whose assistance was requisite on the occasion." In many instances, some actual service was rendered to the suitor for the fee paid. The clerk or officer prepared some pleading or proceeding in the action or suit; and on other occasions he examined and authenticated by his office-seal, the process issued or proceeding taken. Now, however, all the writs, pleadings, and papers, in the course of the cause are prepared by the attorney, and where necessary, settled by counsel; each step is taken on the responsibility of the parties or their legal advisers, and consequently the duty of the officers of the Court are confined to filing and preserving the records of such proceedings as may be necessary to bring the case properly before the Court for its decision.

The Report further states, "There seems reason for believing that the produce [of the fees] so collected, or at least some portion of it, constituted at one time a part of the casual revenue of the Crown. This, however (adds the Report), is a subject rather of antiquarian curiosity than of practical in-

terest." Yet it is not unimportant to remark, that where the Crown and its officers each partook of the profits of these fees, the burden was aggravated to the unfortunate suitors, and its enormous amount may thus be more readily accounted for.

The Committee then proceed to state, that "the officers of the Court appropriated the fees they received for their own use, as a remuneration for the performance of their duties, and there is no doubt that this practice existed for very many years, and has continued until quite recent times. It is obvious (they pertinently add) that such a practice would be likely continually to lead to evils and abuses."

So early as the year 1598, there was a presentment of fees under an order of Lord Keeper Egerton, and in 1654, an ordinance was issued by Oliver Cromwell, giving a list of authorized fees. There was also a Parliamentary Committee in 1732, which was followed by the order of Lord Hardwick in 1743. The modern inquiries are then noticed, and the amount at the present time of fees levied in the Common Law Courts, is as follows:—

In the Queen's Bench	£27,144	9	4
Common Pleas	11,509	9	8
Exchequer of Pleas	26,119	10	1

£64,773 9 1

In the Court of Chancery the amount is larger.

Fees paid to the Fund	£146,500
Copy-money retained in the offices	10,500
Officers' appropriated fees	22,500

£179,500

And to which is to be added, as paid out of the Suitors' Fund, the salaries of judges, officers, and other charges, amounting to 66,750*l*.

Making a total levied on the suitors of 246,250*l*.—very nearly a quarter of a million annually!

The Report contains a full description of the present official system of the Court of Chancery: 1. The Office of Records and Writs. 2. The Supena Office. 3. The Examiners' Offices. 4. The Registrars' Office. 5. The Masters in Ordinary. 6. The Office of Reports and Entries. 7. The Taxing Masters. 8. The Accountant-General. 9. The Chancellor's Principal Secretary. 10. The Secretary of Decrees. 11. The Secretary of Bankrupts. 12. The Secretary to the Master of the Rolls. 13. The Doorkeeper. 14. The Affidavit Office.

15. The Secretary of Lunatics. 16. Masters in Lunacy.

The objections to the present system are thus stated:—

"The system of fee-taking, in the Court of Chancery, appears principally to have originated in a plan to secure sufficient emolument to the officers, and to stimulate them to diligent exertion in their several positions; but a system which gives men a personal interest in the fees to be demanded or received, is always open to the objection, that under some specious pretext extra charges may be made. Gratuities, which soon advanced into recognized demands, are paid to secure expedition and priority in dispatch of business. An easy path is thus opened to extensive frauds on the suitor by the multiplication of unnecessary charges, and the system further causes waste of time, by taking the officers away from their legitimate duties. It operates also as an obstacle to every reform which may, in any manner, interfere with the profits of revenue heretofore received by the officer.

"Your Committee beg to draw attention to the objectionable mode now adopted, of allowing certain officers, whose salaries were fixed by Act of Parliament, to retain a portion out of every 4*d*. per folio, payable for copies of documents made in their office. This practice interferes with an important provision of the Chancery Regulation Act, that suitors shall not be compelled to take copies; it gives the officer a direct interest to increase the number of copies, and to magnify and miscount the length of reports. As the work is done as cheaply as possible by inefficient hands, the copies are generally slovenly, and often inaccurate."

The Committee advise the payment of all officers by salaries.

"The system of paying officers by fees, as a means of ensuring the due performance of their duties, has been for some time abandoned, so far as regards the principal officers of the Court; and your Committee are of opinion, that it will be advantageous to the public, to the suitors, and to the officers, to provide, that the payment of all officers of the Court of Chancery by means of fees should henceforth be abolished, and that every person connected with the Court should receive fixed salaries. A regulation of this kind will be comparatively useless, unless the strictest precaution is taken that nothing more than such salaries is received by these officers. Your Committee observe, that in the Accountant-General's Office fees are openly taken by various clerks, contrary apparently to the prohibition of an Act of Parliament, as well as of an order by a Lord Chancellor. By the return of the clerks themselves, their fees altogether amount, in this office, to more than 2,500*l*. a year. Your Committee think, that it is the duty of the head of the Court, at all times, to see that prohibitions, so expressly made, are strictly regarded.

"The abolition of payment of fees will un-

doubtedly take away one great stimulus to exertion; but your Committee are of opinion, that a more wholesome stimulus would be given, by advancing those who conduct themselves well, according to merit and zealous service, and by providing for the removal of inefficient and incapacitated officers. At present the officers are generally advanced according to seniority; this is especially the case in the Registrars' Office; where, by the course of the office, every person employed rises in regular succession, without reference to his merits. Your Committee are of opinion, that promotion should depend on merit, and that every subordinate should be to some extent dependent upon his immediate superior, and that every such superior should, to a similar extent, be responsible for the conduct of his subordinates.

"They therefore recommend that there should be annual reports made from each office, to the Lord Chancellor, of the merits and conduct of the subordinate officers therein. The Lord Chancellor should have power to advance the subordinates in their respective offices, according to their merits, and to remove them for misconduct or permanent disability.

"They think also, that each officer removed for permanent disability should receive a retiring pension; and that the Lord Chancellor should have power to assign, if he think fit, retiring allowances to officers, who may apply for leave to retire after fixed lengthened periods of service. Your Committee think, that in case the Lord Chancellor grants such an application, he should be required to put on record the reasons for giving it his sanction."

On the "assumption"—which we hope will soon be altered—that the charges and expenses of the Court are still to be defrayed by the suitors, the Committee directed their attention to an improved mode of levying the funds of the Court.

"The number of small fees now received in the Court of Chancery occasions a great waste of time to both officers and solicitors, and renders it difficult to ascertain, that the full amount is duly accounted for. It appears from the evidence relative to the five offices of Records and Writs, Examiners, Registrars, Masters, and Reports and Entries, that there are more than 100 different items of fees chargeable in those offices; and that the average weekly receipts are £4,500. If each fee be calculated at 5s., which is above the average, the number of fees taken in the course of a year, is upwards of 280,000. The loss of time and trouble occasioned by the number of these fees, coupled with their amount, have been alleged by a numerous body of solicitors (who petitioned the House) as the reason why they cannot recommend any suit respecting property less in amount than £1,000."

"By consolidating the fees, some 100,000 suits might be brought forward, and the time would be saved. Such a course would save the law 100,000 suits, and would add 100,000 suits to the number of suits."

afford an easier check on the correctness of the returns. To this last point your Committee would draw especial attention, as they find the only security, at present, that these fees shall be duly collected, and paid over, is that provided by statute, namely, the affidavit of the officer receiving the money, that the amount paid over is the total sum which he has received. Although books are kept, in which every item ought to be entered, there is no mode of ascertaining whether all such entries are made; neither is there any periodical investigation, nor any officer whose duty or interest it is to look into the matter. There is not even the security of an affidavit, that the officer has collected all fees which ought to be paid, nor is there any means of discovering any omission in accounting for the fees which are paid. The system is objectionable, both as regards the officers and the suitors; as to the officers, it places a temptation in their way, and renders them liable to unjust imputations; as to the suitors, it does not insure the due payment of fees by all, thus increasing the burthen on those who do pay.

"Your Committee think it right to observe, that of the actual receivers of fees, the only persons who make affidavits of the correctness of their payments into the *Ex Recd* are the clerks of the Offices of the Registrars and Taxing Masters, and in the Affidavit Office; in the remaining cases, the affidavit is made by officers, who have no personal knowledge of the receipts. About 90 persons receive, and of this number only 40 make affidavits."

The Committee notice the suggestion made by several witnesses, that considerable expense might be saved if the records and documents used in suits, so far as it can possibly be effected, were filed and kept in one office, and not as at present distributed in several distinct offices. They then recommend the abolition of the following offices; the Affidavit office and the Report office:—the chief clerkships in both of which are now vacant. They also think that the Chancery office at the Bank of England affords the requisite check on the Accountant-General, and that the office of Clerk of Accounts may be discontinued.

The Committee further report on the mode of proceeding in the Masters' offices by voluntary warrants, where the attendance is for one hour only at the most, and at broken intervals, whereby the business is neither consecutively nor satisfactorily transacted. They point out the evil as loudly requiring a remedy.

Next it is proposed to abolish office copies, which are often not made, though the charge is exacted for the purpose of the clerk's profit.

Supposing it to be still required to keep up the funds for the expenses of the Court, the Committee add that the law would be saved.

It is suggested that the amount might be raised by a per centage on monies in the hands of the Accountant-General, and of the Receivers of the Court, as a remuneration for the security afforded by the Court to property entrusted to its care, and for its labour as trustee and banker. Such an impost, it is represented, would be less troublesome to solicitors and less expensive to clients, and the whole would be levied at one office with regularity, economy, and security. The Committee think that 10a. per cent. would be sufficient, but that the Court should have the power of directing the parties to suits and other proceedings to bear the whole or any part of the expense of such per centage, as it now exercises with relation to the costs of suits and proceedings.

They recommend that the fees should be consolidated and fixed by an order of the Lord Chancellor, and all other fees and gratuities strictly prohibited; that the business of the Report Office and Affidavit Office, should be transferred to the Clerk of Records and Writs;—that orders of course should as far as practicable be abolished; and such as are continued transferred from the Rolls to the Registrar's Office.

They also recommend that the number of Masters in Ordinary be reduced; but it is added in the Report, that since this resolution passed in the Committee, the business of the Master has been greatly increased by the Act for Winding up Joint-Stock Companies.

Lastly, they propose that the Accountant-General shall be paid by salary, and not by brokerage; and that the balance only of the stock required on each day shall be bought or sold, and the one-eighth per cent. saved to the suitor paid to the Suits' Fee Fund.

Such are the contents of this important Report, on the prominent parts of which, and the evidence and returns which are appended, we shall have occasion again to address our readers.

PRIVILEGES OF ATTORNEYS AND SOLICITORS.

A PARAGRAPH has been going the round of the daily and weekly newspapers, containing a vague and not particularly accurate notification, that by an act of last Session, (12 & 13 Vict. c. 101,) the privileges of attorneys were abolished.

The only provision in the act referred to affecting the privileges of attorneys, and no

doubt that which is alluded to in the new papers, is the 13th section of the Small Debts' Act AMENDMENT Act, which is in these terms:

"That no privilege *shall* be allowed to an attorney, solicitor, or other person, to exempt him from the provisions of this act, or the said act for the more easy recovery of Small Debts in England." (9 & 10 Vict. c. 95.)

The only effect of this enactment is, as we have already pointed out, to place an attorney, desiring to sue as plaintiff in the same position as any other plaintiff, with respect to the obligation to sue in the new County Courts. It had already been determined, with respect to all claims and demands *against* an attorney, that he was not exempt from the jurisdiction of the County Courts,* inasmuch as the 9 & 10 Vict. c. 95, s. 67, provides that "no privilege, except as hereinafter excepted, shall be allowed to any person to exempt him from the jurisdiction of any court holden under this act," and the privilege of an attorney is not one of those thereinafter excepted. The right of an attorney to sue for the recovery of his own debts in the Superior Courts, was upheld by *quer*, upon the ground that an attorney the Courts of Queen's Bench and Exchequer plaintiff not putting the process of the County Court in motion, could not be fairly said to be within "the jurisdiction" of those Courts, or to come within the meaning of the 67th section of the County Courts' Act, and that the Legislature had in no part of the County Courts' Act, by express words interfered with the privileges of an attorney. Notwithstanding the faulty construction of the short section above cited from the act of last Session, we apprehend, it would be held, as already intimated, to place an attorney plaintiff on the same footing as any other plaintiff, so far as regards the jurisdiction of the County Courts.

It may be observed, however, that the privilege of an attorney of the Superior Courts, to sue in a Court in which he was admitted as an attorney, was not a privilege for his personal benefit, but appertained to him as an officer of the Courts, and was, in fact, the privilege of the Courts and not of the attorney. The privilege was as old as the Superior Courts themselves, and was founded upon the principle, that the business of the Courts would be delayed and interrupted, and the services of attorneys to their clients interfered with, if they were called upon to give their personal

* *Lewis v. Hance*, 5 Dowl. & L. p. 444
Jones v. Brown, *ibid.* p. 716.

attendance in Court in which they did not practice professionally. Whether the altered state of society was incompatible with the continued existence of this ancient privilege, is not, perhaps, now worth inquiring.

It is fit, however, that the public should know, that the privilege thus abolished, was not a personal privilege of attorneys and solicitors, who in point of fact, can be said to enjoy no personal privilege beyond the rest of their fellow subjects at the present day, except, indeed, the unenviable privilege of being required to pay a heavy tax, from which all other classes and professions are exempt.

MR. CHARLES PHILLIPS, AND HIS DEFENCE OF COURVOISIER.

A few weeks ago, we expressed in decided terms, an opinion that the learned gentleman above mentioned had given a conclusive and triumphant answer to the charges which had so long been circulated against him, relative to his defence of the confessed and convicted murderer of Lord William Russell. Those charges were two-fold: that he had impiously appealed to the Deity to attest the truth with which he declared his belief that Courvoisier *was innocent*; and, moreover, that notwithstanding the confession, he had cruelly sought to impute the guilt of the murder, to one or both of the women servants of the murdered nobleman, who had appeared as witnesses against Courvoisier. A graver accusation than this could not have been preferred; and—without pausing to reprehend the spirit in which that accusation has been from time to time, and so very recently revived—we own that we rejoiced, for the credit of the profession, to see a clear and strong demonstration of the falsity of that accusation, in the eloquent letter of Mr. Phillips to Mr. Warren. It appeared to us to answer every point of the charge; and we have rarely seen so prompt and decisive an effect produced on the public mind, under similar circumstances. The triumph of Mr. Phillips was complete, and the cloud which had settled for years upon his fair fame, suddenly rolled away. Thus, on the 24th ultimo, we expressed ourselves; and we did not do so hastily, feeling that, if we had, we should, as an humble organ of professional opinion, have betrayed the trust and confidence reposed in us. We carefully examined, and reflected, for ourselves; and having, done so, cannot sufficiently express our astonishment and regret, at see-

ing the demolished charges revived, and that with evident personal ill-feeling.

The charge of having appealed to God to attest the sincerity of his belief that Courvoisier was innocent has, however, crumbled away; and all that is now alleged, is, that Mr. Phillips, having shortly before been informed by Courvoisier that he was guilty, publicly told the jury that “the omniscient God alone knew who had done the crime.” A more gross and glaring *variance* or *departure* (to use technical language) from the original charge—a more complete changing of the ground of attack, we have seldom seen. We regard the original charge as annihilated. Supposing, then, Mr. Phillips to have used the expression above quoted, he ought, in all fairness, to be taken to have meant only, that as far as concerned the jury’s legitimate means of judging from the evidence, they could not absolutely know who had done the crime. That this was the only legitimate interpretation to be put on his words, is evident from the fact that, when uttering them, he was aware that he himself, Mr. Clarkson, Mr. Flower, the prisoner’s attorney, and the prisoner, knew the fact of the prisoner’s avowal of guilt. What, then, could Mr. Phillips have meant by such an assertion? He knew that the confession would in a few hours be blazoned over the world; and cannot be supposed to have been insane enough to venture on so impious an asseveration, taken in its *literal* sense, and one so sure of quick detection.

But did he, in fact, utter the expression in question? If, as we have been informed, on what we deem good authority, several persons present are ready to depose on oath that he said simply, “Do you ask me who did this crime? Ask the omniscient God!” there is an end of even this varied version of the calumny: for nothing is easier than to suppose the reporter, though entitled to every degree of credit for correctness, to have fallen into a slight confusion of terms, in reporting the speech in the *third person*. But however this may be, it is impossible to believe that what was actually said by Mr. Phillips was of the dreadful character imputed to him, regard being had to the decisive and unquestioned testimony of the late Chief Justice Tindal and Mr. Baron Parke, to the unexceptionable character of Mr. Phillips’ address. After that testimony, we presume everything in favour of Mr. Phillips, and against the validity of the charges.

The same observation applies to the second item of accusation, and which is that relating to the alleged inculpation of the

female servants. This, also, we regard as conclusively disposed of. It was evidently founded originally on a forgetfulness of the all-important fact, that the cross-examination of the women servants had preceded, instead of following, the confession of Courvoisier. After he had confessed, Mr. Phillips, at the very outset of his defence, conspicuously and anxiously disclaimed all intention of imputing the crime to the female servants; and the jury doubtless carried that disclaimer along with them, as Mr. Phillips evidently intended they should, throughout the defence. It seems to us highly uncandid in any commentator on the case to suppress this important fact, or seek to fritter away the effect of it by harping on one or two stray expressions apparently at variance with it, culled out of a three hours' speech by a most eloquent counsel, speaking under circumstances of almost overwhelming and perhaps unparalleled difficulty. Was Mr. Phillips to defend Courvoisier, or was he not? It is admitted that he was bound to do so, and by "all fair arguments arising on the evidence." That he discharged this trying duty admirably, is vouched by Chief Justice Tindal, and Mr. Baron Parke. It is impossible to have more conclusive and unexceptionable testimony. It is impossible to impugn either the intellectual capacity, the opportunities for vigilant observation, or the lofty integrity and honour of these distinguished personages; and their testimony crushes the calumny into powder.

There is one circumstance, however, having a material bearing on this case, on which we have taken some pains, for the satisfaction of ourselves and our readers, to inform ourselves correctly. We have read the *Times*' report of the trial; and from the remarkable and suspicious facts elicited on the cross-examination of the police, especially with reference to the blood-spotted articles of dress alleged to have been found in the prisoner's portmanteau—we entertain no doubt that Mr. Phillips believed, there had been foul play, brought into action by the large reward of 450*l.*, to ensure a conviction. The police, of course, knew nothing of the murderer's confession; yet they spoke to facts which, if unimpugned, would have sealed the doom of the accused. These cross-examinations have been kept in the background during the recent controversy; and we have no hesitation in expressing our opinion, that had Mr. Phillips abstained from commenting, on the facts thus elicited in evidence, he would have fatally compromised his

character as an advocate. Infinitely better would it have been, to throw up his brief, as he had originally intended. Had he, however, done so, a far louder clamour than has since arisen would have been excited against him; and we should have heard the of his poltroonery and perfidy, equally whether he had thrown up his brief, or retaining it, virtually aided the conviction of his client by a faint and denunciatory line of pseudo defence.

The broad features, the strength of Mr. Phillips's case, must remain in the fact that two of the best judges who ever sat in a court of justice, and who watched the eloquent speaker in defence of the accused, with practised sagacity, and one of them with specially quickened vigilance, are proved beyond all possibility of doubt, to have not only pronounced Mr. Phillips not guilty of the offences since imputed to him, but also to have declared his conduct unexceptionable, — the late lamented Lord Chief Justice adding that, "under circumstances of extraordinary difficulty," Mr. Phillips had "properly discharged a most painful duty." These facts there is no gainsaying. One of these eminent personages is alive, and knows and approves of the publicity given to these facts. If Mr. Phillips had rested his refutation on this evidence alone, that refutation would have been complete and irrefragable.

In a matter of this kind, we feel it a duty, as faithful chroniclers of professional events, to come forward and unhesitatingly register our adherence to a deliberately-formed opinion, in favour of a gentleman who has, throughout a long professional career, maintained a character of undoubted integrity, and worthily occupies a seat on the bench of justice.

NOTICES OF NEW BOOKS.

The Joint-Stock Companies' Winding-up Amendment Act, 1849, (12 & 13 Vict. c. 108.) with an Introduction, Notes, Practical Directions, and Notes of Cases, and an Appendix of Forms, used in the Winding-up of Joint-Stock Companies; being a Supplement to the Joint-Stock Companies' Winding-up Act, 1848. By JOHN MALCOLM LUDLOW, of Lincoln's Inn, Barrister-at-Law. London: V. & E. Stevens, and Hodges and Smith, Dublin. Pp. 253. 1850.

Mr. LUDLOW has enlarged his edition of the "Joint Stock Company's Winding-Up Act of 1848," and added that of 1849.

He has collected the decisions on the construction of the original Act, given a valuable collection of Forms, and his volume now presents a complete digest of the law and practice in this new and important branch of legal business. The main features of the new Act are thus described:—

"The chief fault of the Winding-up Act lay in the perplexed phraseology and minute definitions of the first two sections,—bearing as they did the evident impress of those unworthy parliamentary compromises, by which the enactment of simple and equitable rules of law is made subservient to the magnitude or the clamorousness of particular interests, claiming special exemptions. That fault is now—not removed,—but greatly diminished, by the 1st section of the Amendment Act, which extends the application of the original Act to all partnerships, associations, and companies of more than seven members, whether formed before or after the passing of the original or the amended Act, subject to two exceptions, viz., Railway Companies incorporated by Act of Parliament, which are absolutely excluded; and Mining Companies on the Cost-book principle in the Stannaries of Cornwall, which are especially dealt with.—This amendment, it will be seen, does not affect a principle, since none was laid down, but goes far to supply one.

"Sections 2 to 5 are additions to the detail of the Act; requiring further advertisement of the petition; cheapening affidavits in support; empowering the Court to resort to the Act in winding-up suits; extending the provisions as to the sureties of the Official Manager and their recognisances.

"Section 6, with which may be classed section 36, lays the foundation in Equity practice of a system of payment by per-centage, and is thus the germ of an important practical reform. The former section fixes the maximum scale of remuneration by per-centage of the Official Manager; the latter suppresses fees payable to the Sutors' Fee Fund under the Act, by the substitution of a like scale of per-centage. Either section is but a graft on the former Act.

"Sections 6 and 7 introduces slight variations or corrections; giving to the Master the power, previously vested in the Court, of fixing the remuneration of the Official Manager, and enacting that certain provisions in the former Act as to the Official Manager should include the Provisional Manager.

"Sections 8 to 11 are mere additions or explanations of detail,—giving power to the Official Manager to draw and indorse bills and notes, and to raise money on the security of assets,—extending the meaning of the word 'contributory' in certain provisions to 'alleged contributories,'—defining the authority of the Official Manager where there are more than one,—empowering the Master to fix the remuneration of the Official Manager's solicitor.

"Section 12 is a slight variation of detail, empowering the Master, instead of the Court,

to fix the costs of proceedings before the Court, as to which the Court shall have made no order. The power given by it to the Master to settle the principle and the scale of fees is however very important, and if properly exercised, may afford a sample of what might have been done towards reducing to reasonable limits the extravagance of Railway Committees in Parliament.

"Section 13 is purely additional, but is really important, as it gives validity, as respects third persons without notice of any fraud, to all acts of the Official Manager directed to be done by the leave of the Master, although done without such leave.

Sections 14 to 18 are chiefly additional or explanatory,—allowing bankrupt or insolvent contributories to be represented by their assignees,—extending the Master's power of adjournment,—giving him power to dispense with advertisements, so as practically to vary certain provisions of the Act at his discretion,—and power to review his orders;—and making the lists prepared by the Manager evidence as between the contributories.

"A really important series of clauses are those numbered 19 to 24, which all relate to the taking of evidence, and constitute almost a distinct chapter to the Winding-up Act, together with sections 63 and 64 of that Act. The Master is empowered to require any evidence to be given which might have been obtained in a suit on behalf of the Company. Evidence is empowered to be taken by District Commissioners of Bankruptcy, and certain County Court Judges in England, and by Commissioners of Bankrupt and Assistant Barristers in Ireland, and in certain cases by the Vice-Warden and Registrar of the Stannaries Court (mostly the same officers as are made Masters Extraordinary for the purposes of winding up by section 123 of the old Act), and by the Sheriffs in Scotland, with due provisions as to witnesses and costs. Summonses from England are to be good in Ireland, and *vice versa*,—and lastly, affidavits are empowered to be taken under the Act, it may be said generally, by any Court or officer legally authorized, and judicial notice is required to be taken of the seal or signature of such Court or officer.

"Sections 25 to 27 are minute matters of detail, section 26 slightly varying section 38 of the old Act. Deeds of grant by the official Manager are not to be settled by the Master unless the parties differ; the statement of a number or amount of shares is dispensed with in notices of inclusion or exclusion from the list of contributories; and the powers of inclusion or exclusion are authorised to be exercised so long as the list has not been wholly settled.

"Section 28 is the most marking actual alteration made in the former Act, since it repeals the whole section (84) as to the apportioning the amount of calls. But it will be seen that its sole purpose is that of empowering the Master to enforce recognised liability to contribution, and to provide beforehand for the contingency of non-payment of calls.

"Sections 29 to 31 are additional compromises;—defining better the power to compromise with contributories;—extending the provisions as to proving against the estate of bankrupt or insolvent contributories, and the disposal of dividends on such proof;—extending the powers of the Master to the ordering of special juries, new trials and interpleaders.

"Section 32 is a variation of section 78 of the old Act, empowering the Master to make orders in the presence of parties, although varying from the notice given.—Section 33 fixes a period for notices of motions for rehearing.—Section 34 (which is important) provides that orders need not be reversed except upon the substantial merits of the case.—Section 35 relates to fees, and has been already referred to.—Section 36 facilitates service by post, with a slight variation of the old Act.—Section 37 extends the power of the Lord Chancellor to make rules and orders. Section 38 makes the Amendment Act a part of the original Act; the last three clauses being the counterparts of clauses in the old Act, as to the short title of the Act, its non-application to Scotland, and the usual amendment or repeal clause, now inserted as a matter of form by the printers when directed."

The author, in his introductory chapter, has taken the opportunity of recommending a complete and searching reform of Equity procedure:—

"Complete, I say, and searching. Not bit-by-bit, chapter by chapter,—stopping up chinks and cracks, when the whole fabric totters. And by the hands, I say, of the legal advisers of the Crown; not of any single member of Parliament, however eminent in his profession; not of any voluntary association, however influential and well-meaning. Mr. George Turner has pledged himself to take up the subject of Equity Reform, if the Government fail in so doing (and every well-wisher to good legislation must hail with joy the announcement); and two or three draft bills, it is understood, have been already prepared by the Metropolitan and Provincial Law Association for that purpose. But is it seemly that such matters should be left to such agents? Is it seemly that there should be a Court of Chancery,—two of the Judges of which are Peers, and which is presided over by the highest Officer in the State,—is it seemly that there should be a Cabinet, including the Lord Chancellor of Great Britain and an ex-Lord Chancellor of Ireland,—is it seemly that there should be Law Officers, Members of the House of Commons, and one of them generally selected from the Chancery bar, and yet that reforms, logically required by mere consistency of procedure, proved by experience to be advantageous, and which would save to suitors (that is, to the public at large), at least two-thirds of the time and much also of the money now wasted in litigation, should have to depend for their accomplishment on the lucky accident of the return by the City of Coventry to the Opposition Benches of the

House of a particular Queen's Counsel, and upon that of the combination of a few hundred solicitors, to propose measures with respect to which their interest and those of the public happen to agree? Is Government always to be a break, never a steering-wheel?"

Mr. Ludlow notices the pamphlets of Mr. Fane and Mr. T. A'Beckett, and agrees with them that a law minister, or minister of justice, is needed for the work of further amending the law.

EXCLUSIVE AUDIENCE OF THE BAR.

INSOLVENCY CASES IN THE YORKSHIRE COUNTY COURT.

It appears there was some misunderstanding as to the day fixed for the discussion of the question before Mr. Sergeant Dowling, on the claim of the Bar to exclusive audience in insolvency cases before the County Court. We mentioned in our number of the 8th inst. that the 26th of January had been appointed, but there was some doubt whether the matter, wholly or partially, would not be argued on a previous day, and decided in January. We are enabled to state, however, that on an application from the Incorporated Law Society, the learned Judge has intimated his willingness to hear the arguments on the part of that Society on the 26th of January. We understand that a statement or memorial has been prepared by the Council, and that they will be represented in the County Court by one of the members of the Society, an eminent solicitor at Leeds, who will attend specially on the day appointed to argue the question.

NOTES OF THE WEEK.

UNCHALLENGED JUROR REMAINING ON THE JURY.

IN *Skellthorn v. Levy*, which was an action to recover compensation for false imprisonment on a charge of felony, on November 27, at the Sittings at Nisi Prius after Michaelmas Term, in Middlesex, before Mr. Justice Wightman, and a common jury, upon their retiring to consult, it appeared that one of them, who had been challenged, still remained on the jury. The learned judge intimated, that the jury would be discharged, but upon the counsel (*M. Chambers* for the plaintiff, and *W. H. Watson* for the defendant) stating, that they were willing to take a verdict from the present jury, by mutual consent, the jury was allowed to retire to consider their verdict.

IMPROVEMENTS AT THE INCORPORATED LAW SOCIETY.

The new building has been completed comprising an

Inner Library

for the exclusive use of the members, containing Parliamentary Works and Public Records, County History and Topography, Genealogy, Heraldry, and miscellaneous works.

The Outer or Law Library comprises the Statutes, Reports, Digests, Treatises, and other works relating to the law. The Articled Clerks of Members are admitted as Subscribers to this part of the Library.

Additional Fire-proof Rooms.

By the alterations in the building there are now several new fire-proof rooms to be let to members of the society, for the security of deeds and papers.

NEW JUDGE OF THE WESTMINSTER COUNTY COURT.

Francis Bayley, Esq., son of the late Mr. Baron Bayley, has been appointed judge of the Westminster County Court, in the place of the late Mr. Moylan. Mr. Bayley is a member of the Equity Bar, and was called to the Bar by the Middle Temple in Trinity Term, 1827.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

In re Cambridge and Colchester Railway Company, ex parte Freeman. Nov. 7, 1849.

WINDING-UP ACT 1848.—COSTS OF CONTRIBUTORIES.—APPEARING THROUGH OFFICIAL MANAGER'S MISTAKE.

Upon appeal from the Vice-Chancellor Knight Bruce; held, that the Master has not, under the 11 & 12 Vict. c. 45, a discretion of awarding against the official manager, the costs of contributories appearing through his mistake before the Master on a reference for winding-up, but that such costs are to be borne by the estate.

An order for a reference to the Master to wind up the above railway company, having been made by the Vice-Chancellor Knight Bruce on the 25th of May last, the solicitor to the petitioner made out a list of contributories, which was adopted by the official manager appointed under the 11 & 12 Vict. c. 45, and notices were given to the several contributories inserted therein. The contributories, however, objected to the list being settled, on the ground, that under the 76th section of the 11 & 12 Vict. c. 45, it should have been made out by the official manager. The objection was allowed, and the Master ordered the costs of the contributories who had attended, to be paid out of the estate. The petitioner then applied to the Vice-Chancellor Knight Bruce for an order, that the costs thus incurred by the official manager's mistake, should be paid by him personally, and not out of the estate, but the motion was ordered to stand over generally, whereupon this appeal was brought.

Randell Palmer, for the appellants, referred to the 11 & 12 Vict. c. 45, ss. 59, 64, 96, 106, and 106; *Bacon and Roeburgh* for the respondents.

The Lord Chancellor said, that the Master, under the 96th section, is to proceed as under a decree of this Court, and his orders are to be enforced in the same manner, and under the 103rd section, coupled with the 96th section, the Master has only such a general power over costs as he would have under a decree. There was no clause to authorize the Master to award

against the official manager, the costs of parties improperly summoned, and therefore there were no new powers as to costs conferred under the act, other than existed under a decree. The motion would be refused, with costs of the Court below, but without costs of the appeal.

In re Bloye's Trust, ex parte Hillman. Nov. 8, 9, 10, 1849.

SOLICITORS.—AGENTS FOR SALE OF REVERSIONARY INTERESTS.

Held, reversing the decision of Vice-Chancellor of England, that the clerk of solicitors employed as agents for the sale of a reversion, cannot become a purchaser thereof, and a deed of conveyance of such reversion will be set aside, although the price paid was not inadequate.

The Court however declined, without a bill filed for that purpose, to set aside such a deed upon appeal from an order of the Court below for payment out of Court to the purchaser of the amount of the reversion which had fallen in and had been paid into Court under the 10 & 11 Vict. c. 96, but ordered the re-payment into Court of the amount, and added a declaration that the purchaser was not entitled to the same.

THIS was an appeal from the Vice-Chancellor of England, who had ordered the payment of 1,757*l.*, the amount of a reversion paid into Court, under the 10 & 11 Vict. c. 96 (the Trustees' Relief Act), to Mr. Lewis, a clerk of Messrs. Overton and Hughes, who were the solicitors to the appellant, Mrs. Hillman. It appeared that Mrs. Hillman was entitled, upon the death of Admiral Bloye, to a share of a sum of 8,000*l.*, and had consulted Messrs. Overton and Hughes upon the sale thereof, and it was put up to auction. Mr. Barker became the purchaser for 900*l.*, but upon his objecting to the title and declining to complete the purchase, Mr. Lewis offered himself in his stead, and the conveyance was executed to him. Mrs. Hillman, upon the death of Admiral Bloye soon afterwards, sought to set aside the sale, on the ground of inadequate consideration and misrepresentation. It appeared before the Vice-Chancellor that the value of the reversion was about 1,600*l.*

and an order was made for the payment out of Court to Mr. Lewis.

Bestell and Rogers for the appellants; *Smart and Lovell* for the respondent.

The Lord Chancellor said, that the Vice-Chancellor had considered the question of value only. Messrs. Overton and Hughes were unquestionably agents for the sale of the reversion, and Lewis must be treated in the same way as they would be if purchasing. They were incompetent in their position as agents for the sale to become purchasers; just as a trustee for sale, whose duty is inconsistent with becoming a purchaser, cannot purchase: *Downes v. Grasebrook*, 8 Meriv. 200. The deed, however, cannot be set aside without a bill, but the order of the Court below will be dismissed with costs, and an order made for the repayment to the Accountant-General of the 1,757*l.*, with a declaration that Mr. Lewis was not entitled thereto.

In re Dyce Sombre, ex parte Shadwell. Nov. 14, 1849.

SOLICITOR.—PETITIONS TO SUPERSEDE LUNACY COMMISSION.—COSTS.

The costs incurred by a solicitor employed by a lunatic, so found by commission, in prosecuting a petition to supersede the commission were allowed, but disallowed of a second petition for the like object, where the commission was affirmed by the first petition, and no prayer for costs had been made in the second, and there were other parties moving therein to whom the solicitor might look for payment.

This was a petition of Mr. Charles Shadwell, the solicitor for Mr. Dyce Sombre, for payment of the costs incurred by the lunatic in prosecuting the petitions presented by him in 1847 and 1848, to supersede the commission. An order had been made on the first petition for the examination of Mr. Dyce Sombre, by medical men who had reported adversely to the lunatic.

Rolt in support of the petition; James Parker for two of the next of kin, did not oppose.

The Lord Chancellor allowed the costs incurred in prosecuting the first petition. As to that of the second, there was no prayer for the costs in that petition, and there were other parties who had improperly interfered in respect thereto, to whom the solicitor might look for payment, and the costs would therefore be disallowed.

Dec. 12.—*In re Shrewsbury and Chester Railway Company v. Chester, Holyhead and Birkenhead Railway Co.*—On appeal against an order of Vice-Chancellor Knight Bruce, motion of defendants discharged with costs.

—13.—*In re Kernat, ex parte Catlin*—Part heard.

—14.—*Caton v. Ridout*—Order of Vice-Chancellor Knight Bruce overruled.

—12, 13, 15.—*Attorney-General v. Jones*—Information dismissed for probate and legacy duties.

—13, 15, 16.—*Street v. London and Black Railway Company, ex parte Hollingworth*—Appeal motion from Vice-Chancellor Knight Bruce dismissed with costs.

—13, 14, 17.—*Attorney-General v. Corporation of London*—Appeal dismissed from the Master of the Rolls—costs reserved.

—15, 17.—*Mathews v. Earl of Carlisle*—Injunction dissolved with costs to restrain defendants from signing a grant of a gale to dig for iron ore.

—14, 18.—*Rackham v. Siddall*—Cur. ad. vult.

—18.—*Boothby v. Boothby*—Part heard.

—18.—*In re Thorp*—Stand over to 1st petition day in Hilary Term.

IN THE HOUSE OF COMMONS.

Kelly v. Cheswell. Nov. 26, 1849.

WILL.—CONSTRUCTION.—STATUTE OF ALIENATIONS.

Upon construction of a will, held, that the parties entitled to certain personal property bequeathed to trustees upon trust to her, durante viduitate, and in default of appointment by her, to be distributed under the Statutes of Distribution, and she made no appointment, were the next of kin to the testator at his death.

The testator, Thomas Moore, by his will bequeathed 1,000*l.* stock, and all the moneys he died possessed of, to James Elliot and Samuel Kelly, upon trust for his wife, Mrs. Moore, during her widowhood, and, by a subsequent codicil, in default of appointment by her, to the parties entitled according to the Statute of Distribution. The widow died without having made any appointment, and this suit had been instituted for the administration of the estate.

Turner, Green and Rospell, for the several parties.

The Master of the Rolls held, that the parties entitled under the will were the next of kin to the testator at the time of his death.

Dec. 19.—*Duke of Brunswick v. Duke of Cambridge*—Exceptions to Master's report, finding defendant's answer sufficient, disallowed except two.

—13.—*Loman v. Loman*—Judgment in administration suit.

—15.—*Lowndes v. Spicer*—Time enlarged for payment of mortgage money, on terms.

—16.—*Alfrey v. Alfrey*—Cur. ad. vult.

Vice-Chancellor of England.
Corporation of Berwick-on-Tweed v. Mayor
Nov. 16, 17, 1849.

PRODUCTION OF DOCUMENTS.

An order was made in a supplemental suit, against the surety of a bond for the due payment of moneys to the plaintiffs, for the production of papers and documents relating to the matters in a suit for the recovery of a sum of money alleged to be due from the defendants, and particularly of a

James Hargreaves vs *David Murray*.—*James Hargreaves* deposited obtained from the defendant, by the surety. *Taxes* suit was instituted against *David Murray*, the treasurer of the Corporation of Berwick-upon-Tweed, for the recovery of a sum of £250, alleged to be due to the plaintiffs, and an order was made for the payment thereof. *David Murray*, being out of the jurisdiction, a supplemental bill was filed against *William Murray*, one of the sureties to a bond, who, by his answer stated, that he had obtained a deposit from the obligor for £2351, which was in the Commercial Bank of Scotland.

Beckell and Craig, in support of the motion for production of books and papers, and particularly of the bank receipt for the £2351.

Rolls and Lewis, contra.

The Vice-Chancellor made the order as prayed.

Dec. 17.—*Attorney-General v. Grainger*.—Order refused for payment of Attorney-General's costs out of the estate where he had not succeeded.

—18.—*Allen v. Wilson*.—Decree for account up to date of release.

—19.—*Reparte Eton College, in re London and North-Western Railway Company*.—Order for payment of costs by company, under 8 Vict. c. 18.

—17, 18.—*Gates v. Dunboyno*.—Part heard.

Vice-Chancellor Knight Bruce.

Reparte Wilkinson, in re London, Brighton, and South Coast Railway Company. Nov. 16, 1849.

ANNUITY.—ARREARS.—PAYMENT OUT OF CAPITAL.

Where leaseholds had been bequeathed to trustees on trust to pay an annuity, and subject thereto to a tenant for life with remainders over, and the interest was insufficient to keep down the arrears: Held, upon the compulsory sale of the estate under the 8 Vict. c. 18, that the arrears were to be raised out of the fund paid into Court under s. 65, the balance to be invested and the arrears in future to be kept down by a sale from time to time of the capital—costs to present time to be paid by the company.

CERTAIN leasehold property had been bequeathed by a testatrix, in 1838, to trustees, on trust to pay thereout to the petitioner, *Ann Wilkinson*, for her life, an annuity of £62; by weekly payments, clear of all deductions, and subject thereto to *Elizabeth Phillip*, for life, with remainders over. The property had been taken for the purposes of the above company, under the 8 Vict. c. 18, and the purchase money amounting to 1,100*l.* paid into Court under the 65th section. The interest being insufficient to pay the annuity, this petition was presented for the payment of the arrears, amounting to 150*l.* out of the capital paid into Court, and for the investment of the balance and payment of the interest thereof on account of the annuity, and the balance from time to time to be paid out of the remaining capital.

Arnold and Chambers, in support of the petition, which was opposed by *Heron and Rogers* for the parties interested, subject to the annuity, citing *Foster v. Smith*, 1 Phill. 629. The Vice-Chancellor, without intimating an opinion whether the annuitant could not have required a sale to keep down the arrears, said, that the parties entitled subject to the annuity, could not have claimed anything until it had been fully paid, had the property remained unsold. The property having been compulsorily sold, the petitioner is entitled to be paid out of the corpus of the fund, which would be invested, and the future payments provided for as prayed. Costs up to the present time to be paid by the company.

Dec. 13.—*Collins v. Squance*.—Part heard.

—13.—*Crankharke v. Jorning*.—Judgment on construction of will.

—13.—*Mocatta v. Varias*.—Administration decree.

—13.—*In re Dorset Exeter, Plymouth, and Devonport Railway Company*.—Order made to transfer reference from Master Horne to Master Richards, with consent of official manager.

—15.—*Duke of St. Albans v. Hingham*.—Order for an account and receiver of estate.

—15.—*In re Liverpool Union Crown Glass Company*.—Order for winding up.

—15.—*Brittain v. Birkenhead, Lancashire, and Cheshire Railway Company*.—Injunction to restrain proceedings under 8 Vict. c. 18, on plaintiff's undertaking to prosecute cause with due diligence.

—15.—*In re Dorset Exeter, Plymouth, and Devon Railway Company*.—Former order of the 13th discharged on the objection of Master Richards.

—15.—*In re Eastern Counties and South-east Railway Company*.—Stand over.

—15.—*In re Wheel Concord Mining Company*.—Stand over.

—15.—*In re Roberts' Company, Birmingham*.—Order for transfer to charity trustees of monies paid into Court under 8 Vict. c. 18.

Vice-Chancellor Wigram.

Mainwaring v. Beevor. Nov. 20, 1849.

WILL.—CONSTRUCTION.—GRANDCHILDREN.

A motion for the distribution of fund to be paid to the children of the testator's two sons, when the youngest should attain 21, was refused on the ground that other children might be hereafter born who would be equally entitled to the fund in question; but an order was made for the payment of the income of their shares respectively.

THE testator, by his will, after making specific bequests, gave the residue of his funded property to the children of his two sons, *James* and *William Carver*, to be divided and payable among them when the youngest should attain 21. *James* married in the testator's lifetime, and had several children, all of whom had attained 21, but *William* was unmarried.

The Solicitor-General and T. F. Prior, for the grandchildren, asked for an immediate distribution; Wood and Edward Cooke for the trustees; Karslake for other parties.

The Vice-Chancellor said, that as the will could not be construed as excluding any future born grandchildren, according to *Hughes v. Hughes*, 3 Bro. Ch. Ca., 352, 434, and there might be other children born, the petition must be refused. An order was, however, subsequently made for the payment to them, respectively, of the income of their shares.

Dec. 12, 13.—*Speakman v. Speakman*—Cur. ad. vult.

— 13, 17.—*Duke of Beaufort v. Morris*—Petition for new trial of issue dismissed with costs.

— 14, 15, 17, 18.—*Clay and others v. Rufford*—Cur. ad. vult.

— 15, 18.—*East and West India Docks and Birmingham Railway Company*—Injunction dissolved with costs.

— 18.—*Morrison v. Hoppe*—Judgment on construction of will.

— 18.—*Tipping v. Coates*—Part heard.

Queen's Bench.

Bailey v. Abraham. Nov. 9, 16, 1849.

ATTORNEY.—ACTION FOR NEGLIGENCE.—INVESTIGATING TITLE TO ESTATE.

Where the plaintiff lent money on mortgage of an estate, part of which was an encroachment from the lord's waste, and was recovered by the lessee making the same, under the advice of the defendant his attorney, who assumed in the investigation of title that the encroachment was the lessor's, and who also omitted inserting a power of sale in the deed: Held, that an action against him for negligence will not lie.

The plaintiff brought this action against the defendant, Mr. Abraham, an attorney, for alleged negligence in investigating the title of an estate on the security of which the plaintiff had lent 120*l.*, by assuming that an encroachment made by a lessee was the property of the lessor, and which the lessee had since claimed as his own personal right, and for omitting to insert in the mortgage deed a power of sale. The action was tried before Mr. Justice Erie, who had directed the jury to find for the defendant.

Chambers, now moved for a rule to set aside the verdict, and for a new trial on the ground of misdirection.

The Court held, that it was no reason to impute want of skill or negligence to the defendant, nor inserting in the mortgage deed a power of sale, or for not knowing the claim set up by the lessee as to the inclosed waste, and therefore refused the rule.

Dec. 18.—*Bailey v. Bracebridge*—Rule nisi to set aside order of Mr. Justice Erie.

— 18.—*Regina v. Tithe Commissioners*—

Judgment for the defendant on issue to mandamus.

— 18.—*Neeve v. Burridge*—Rule discharged to enter verdict for the plaintiff.

— 18.—*Boehm v. Worsfold and wife*—Judgment for the plaintiff.—Amount of fine reserved.

— 18.—*Keeve v. Ward*—Rule discharged to set aside verdict for plaintiff and enter a nonsuit.

— 18.—*Steele v. Hoe*—On special case, judgment for the plaintiff.

— 18.—*Small v. Gibson*—On motion to enter verdict for plaintiff, non obstante verdicto, judgment for the defendant.

— 18.—*Jenkins v. Brown*—Rule discharged to set aside verdict for defendant and enter it for plaintiff.

— 18.—*Regina v. Bowen*—Rule absolute without costs to set aside side-bar rule to tax defendant's costs where he had died before the assizes came on.

Queen's Bench Practice Court.

Regina v. Coroner of Leeds. Nov. 12, 26, 1849.

INQUISITION BEFORE THE BOROUGH CORONER.—FELONY DE SE.—IRREGULARITY.

An inquisition in which a verdict is returned of *felo de se* must be on parchment, and should contain allegations of "striking," that the death happened within a year and a day, and that there was a "mortal" wound.

Semble, a certiorari to bring up an inquisition before the coroner of a borough in which a verdict of *felo de se* had been returned to be quashed is absolute in the first instance.

A CERTIORARI had been granted on Nov. 19, to bring up an inquisition before the coroner of Leeds, and the depositions on the body of Sarah Ann Whalley, under which the jury had by the direction of the coroner found a verdict of *felo de se*. It appeared she married Mr. Wm. Whalley on the 21st June, that they were living happily together, and that on the 9th July, after breakfasting with her husband, she was found in her bed-room with her throat cut, and a razor in her left hand.

Sir F. Theigier now moved to quash the inquisition, which found, that "it so happened that on 9th July, she being of sound mind, did feloniously and wilfully, and of malice aforethought, kill and murder herself, by inflicting a wound with a razor on her neck, of which wound she was found dead." The inquisition was upon paper, and not upon parchment, as enacted by the 6 & 7 Vict. c. 83, s. 2; in cases of murder or manslaughter; and it contained no allegation of "striking," which, according to, 1 Hale's Pleas of the Crown, 419, rendered it bad; and, lastly, that it did not allege that the death was within a year and a day, or that there was a mortal wound. *Notes on Coroners, 226, 222.*

The Court quashed the injunction upon the several objections stated at bar.

Common Pleas.

Basson Iron Company v. Barrett. Nov. 7, 10, 1849.

JOINT-STOCK COMPANIES' ACT.—CERTIFICATE OF COMPLETE REGISTRATION.—DEFECTS IN DEED.

Upon special demurrer, held, that a plea to an action by a joint-stock company, incorporated under the 8 & 9 Vict. c. 110, that the deed, upon which a certificate of complete registration had been granted, was defective, was no answer to the action—the company not being thereby unincorporated, as such defects by sect. 8 might be remedied by supplemental deed.

This action was brought by the plaintiffs, who were incorporated under the 7 & 8 Vict. c. 110, (the Joint-Stock Companies' Act,) to recover the sum of 2,400*l.*, due from the defendant, for calls on his shares. The defendant pleaded, that the company's deed of settlement presented to the registrar, under the 7 & 8 Vict. c. 110, s. 4, did not fulfil the requirements set forth in Schedule C., and that therefore the certificate of complete registration granted under sect. 7 was void, and the company not duly incorporated, and that they could not sue the defendant. The plaintiff demurred specifically.

Needham, in support of the demurrer; *Peacock*, contra.

The Court said, the matter set forth in the plea did not show that the company could not act as a corporation and have the ordinary power of suing and being sued. Under the 8 & 9 Vict. c. 110, s. 7, the company could act after obtaining the certificate of complete registration, and the deed to be submitted to the registrar under that section might be remedied, if found defective, by a supplemental deed under the 8th section, and the company remained incorporated although the registrar might have been mistaken. The judgment ought, therefore, to be for the plaintiff.

Chinn, pauper, v. Buller. Nov. 24, 1849.

COUNTY COURTS' ACT.—PLAINTIFF SUING IN FORMA PAUPERIS.—JURISDICTION.

*A rule was made absolute to enter a suggestion to deprive of costs a plaintiff suing in forma pauperis in the Superior Courts, who had recovered less than 10*l.**

Seemle, the County Court Judges have the discretion, under section 78 of the 9 & 10 Vict. c. 95, to permit persons to sue in forma pauperis where the subject matter is within their jurisdiction.

A RULE nisi having been obtained to enter a suggestion on the roll to deprive the plaintiff of costs in the action brought by him in forma pauperis in the Superior Courts, and in which he had only recovered 10*l.*

G. Atkinson now showed cause. The plaintiff dwelt more than twenty miles from the defendant, and was entitled, under the 128th section of the 9 & 10 Vict. c. 95, to sue in the Superior Court. Although the amount recovered was under 20*l.*, yet, as by the 37th section of the County Courts' Act, it is enacted, that "there shall be payable on every proceeding in the courts holden under this act to the judges," &c., "such fees as are set down in the schedule (D.) to this act annexed," &c., "and the fees on every proceeding shall be paid, in the first instance, by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding," &c.; a party permitted to sue in forma pauperis, under the 11 H. 7, c. 12, could only proceed in the Superior Courts, as that act only applied to proceedings by original or bill.

Skinner, in support, was not called upon.

The Court referred to the 78th section of the 9 & 10 Vict. c. 95, which provides, that "five of the judges of the Superior Courts of Common Law at Westminster, including the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or one of the said chiefs at the least, shall have power to make and issue all the general rules for regulating the practice and proceedings of the County Courts holden under this act," &c.; and that "in any case not regularly provided for herein, or by the said rules, the general principles of practice in the Superior Courts of Common Law may be adopted and applied, at the discretion of the judges, to actions and proceedings in their several courts;" and said that the several judges of the County Courts had therefore, as this case was not provided for either in the act or by the rules of practice, the discretion of admitting plaintiffs to sue in forma pauperis, where the subject matter of the claim was within their jurisdiction.

The rule to enter a suggestion to deprive of costs will, therefore, be made absolute.

Exchequer.

Gordon v. Biphick and another; Vass v. Same; Maynard v. Same. Nov. 12, 1849.

FALSE IMPRISONMENT.—CONSTABLE.—BONA FIDES.

Three actions were brought against a constable for false imprisonment, and against another defendant for pointing out the plaintiffs as the parties concerned in the sale of a horse which had escaped and broken a boy's arm, and the plaintiffs were taken into custody but discharged by a magistrate, held, that the question of bona fides of the constable was rightly imported into the question by the judge in his direction to the jury, and that the other defendant was not liable.

These actions were brought against the

defendants, to recover compensation for false imprisonment. It appeared the plaintiffs were engaged in selling a horse at a fair, and that the halter slipped out of the hand of one of them, and the horse became frightened and ran away. A boy was knocked down and his arm broken, and upon a cry being raised by the bystanders for the police, the defendant, Elphick, explained the circumstances to the defendant, Bennett, a police constable, who took the plaintiffs into custody. Upon the following day they were discharged by the magistrate. Mr. Baron Alderson, who presided at the trial at the last Surrey Assizes, directed the jury, that the questions for their consideration were, first, whether Elphick had given the plaintiffs into custody, or merely pointed them out as the persons responsible, if any one were so; and secondly, whether Bennett had acted *bona fide* as a constable in arresting the plaintiffs, and that if so, he would be entitled to a verdict, under the 24 G. 2, c. 44, s. 8, which requires all similar actions to be brought within six months after the arrest. The jury having found for the defendants, rules for new trials were now moved for, on the ground of misdirection.

Hawkins, in support of the motion.

The Court said, the question of *bona fides* was necessarily imported into actions of this nature, and there was no doubt that the defendant Bennett had acted in his character as a policeman. As to the other defendant, he was not liable for merely pointing out the real parties to a constable, who had mistaken some one else, and the rule would therefore be refused.

Court of Exchequer Chamber.

Regina v. Marsh. Nov. 20, 1849.

INDICTMENT.—ATTEMPT TO DEFAUD.—MISDEMEANOR.

Where an indictment did not show a misdemeanor, but merely alleged an attempt to defraud, &c., the conviction thereon was set aside and judgment arrested.

This was a motion in arrest of judgment on behalf of the prisoner, who was convicted at

the last York Assizes, on the fifth count of an indictment, charging that he did unlawfully attempt, &c., to obtain a large sum of money, to wit, 22l. 10s., with intent to defraud, &c., the Agricultural and Cattle Insurance Company, in respect of a horse.

Bliss, in support of the motion, contended that the indictment only alleged an attempt, but did not show any misdemeanor, and that it did not allege in whom the property was.

The Court set aside the conviction and arrested judgment.

Court of Bankruptcy.

(*Coram* Mr. Commissioner Shepherd.)

In re Richards, Ex parte Spottiswoode. Nov. 12, 1849.

PETITION.—DEDUCTION FROM PROOF OF AMOUNT SUBSEQUENTLY RECEIVED.

A petition was dismissed with costs to deduct from the petitioner's proof against a bankrupt estate, for printing a book, a sum received by the sale of the copies of the work, upon condition of returning the dividends thereon; and the Commissioner refused to stay an action pending against the petitioner for the amount of the sale.

This was a petition on behalf of Mr. Andrew Spottiswoode, under the 12 & 13 Vict. c. 106, for liberty to deduct from his proof against the estate of Owen Richards, a law bookseller, of 665l. 18s., for printing Bowyer's Commentaries on the Law of England, a sum of 95l., the proceeds of the sale of the copies of the work to Messrs. Stevens and Norton, offering to return the dividends received thereon of 3s. 4d., and 1s. 3d. in the pound. The official assignee declined to recognize the sale, and commenced an action in the Exchequer to recover the proceeds.

Lucas in support of the petition, which was opposed by *Bagley*.

The Commissioner dismissed the petition with costs, and also refused to stay the action pending against the petitioner in the Exchequer.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

CONSTRUCTION OF STATUTES.

[Concluded from our last Number.]

JOINT-STOCK COMPANIES' REGISTRATION ACT.

Railway company, complete registration before sale of shares.—Section 26 of the Joint-Stock Companies' Registration Act, 7 & 8 Vict. c. 110, prohibiting the sale of shares before complete registration, does not apply to railway companies requiring an act of parliament, those

companies being, in terms, exempted from the operation of the act by the first proviso of section 2, and not excepted out of that clause by any subsequent special provision.

A railway company is sufficiently brought within the enactment of that clause in pleading, if it be averred that the company was established in England for the purpose of making and maintaining a certain railway, to be called &c., under the authority of an act of parliament to be obtained for that purpose, with the usual powers to take land for the purposes of the said railway, and to take tolls from persons using the said railway, and other powers and

...granted by parliament to railway companies; and that the purposes of the said joint stock company and the said railway intended to be executed by them could not be carried into execution without first obtaining the authority of parliament in that behalf. So held on special demurrer.

If it is not necessary, in such pleading, to aver that the company was established for the sole purpose of making a railway. So held on special demurrer.

The Court, in construing such a plea, will take notice that the purposes of such a railway company, though not all specified in the pleading, require the authority of parliament for their being carried into execution.

Where the plea (to an action for the price of shares) sets up as a defence the want of complete registration before the transfer, it is enough if the replication aver that the company is a company for executing a work which cannot be carried into execution, without obtaining the authority of parliament, that is to say, a railway. So held on special demurrer.

The price of railway shares may be recovered under a declaration for "goods and chattels" sold and delivered. So held, on special demurrer, alleging that plaintiff had declared for the price of goods and chattels, whereas it appeared by the replication that he sued for the price of railway shares.

A plea, relying on the want of complete registration, does not describe the company, so as to bring it within sections 2 and 20, unless it says that the company was a banking company, &c., or so to negative the exception in sections; though it averred generally that the company required registration under that act. So held, on demurrer to the replication. *Lawton v. Hickman*, 9 Q. B. 583, 586; *Loonie v. Oldfield*, ib. 574, 590; *Badon v. Branson*, ib. 579, 591; *O'Neil v. Brindle*, ib. 582, 592; *Ray v. Hirst*, ib. 584, 593.

JURISDICTION OF INFERIOR COURT.

Commitment.—Where, under the 8 & 9 Vict. c. 127, s. 1, the judge of an Inferior Court of Record has, upon proof of the ability of the party, made an order *simpliciter* for the payment of a debt by instalments, he cannot, after default made, grant a warrant of imprisonment without giving the debtor an opportunity of being heard against the granting of such warrant.

Semble, (by *Cresswell, J.*), that under this statute, an order of commitment upon non-payment cannot be embodied in the original order to pay.

Quere, whether there is jurisdiction under this statute to commit when the defendant is not within the district? *Esparte Kinsing*, 4 C. B. 507.

Cases cited in the judgment: *Harper v. Carr*, 7 T. R. 370; *Dr. Bentley's case*, 1 Stra. 557; *Eart*, 202; 3 Mod. 148; 2 Lord Raym. 1334; *Capel v. Child*, 2 Tyrwh. 689; 3 Cr. & J. 558.

See Smuggling Act, s. 1.

...under the Lands' Clauses' Consolidation Act, 8 & 9 Vict. c. 18, the 34th section imposes on an umpire the duty of ascertaining whether the right of the claimant to costs under that section arises; and if it does, of settling their amount in his award; and he cannot, by a subsequent certificate, entitle the claimant to obtain payment of them. *London and North Western Railway Company v. Quick*, 5 D. & L. 685.

1. Award.—Costs.—On a submission to arbitration under the Lands' Clauses' Consolidation Act, 8 & 9 Vict. c. 18, the 34th section imposes on an umpire the duty of ascertaining whether the right of the claimant to costs under that section arises; and if it does, of settling their amount in his award; and he cannot, by a subsequent certificate, entitle the claimant to obtain payment of them. *London and North Western Railway Company v. Quick*, 5 D. & L. 685.

2. Notice.—Quere, whether the words "the sum previously offered" in the 51st section of the 8 & 9 Vict. c. 18, refer to the sum which the company "are willing to give," and which, by the 38th section, they are bound to state, in the notice of their intention to cause a jury to be summoned? *Ross v. York, Newcastle and Berwick Railway Company*, 5 D. & L. 695.

3. Costs.—Where costs are settled by one of the Masters of the Court of Queen's Bench, under the 52nd section of the 8 & 9 Vict. c. 18, (Lands' Clauses' Consolidation Act), the Court has no power to order a review of the taxation; the costs being referred to the Master, by that section, as an original arbitrator. *Ross v. York, Newcastle and Berwick Railway Company*, 5 D. & L. 695.

Case cited in the judgment: *Morgan v. Smith*, 9 M. & W. 427.

LIMITATION, STATUTE OF.

Devise of life estate to tenant at will.—Assent.—In 1801, D. being seised of land in fee, permitted his daughter J. and her husband M., to occupy as tenants at will. D. died in 1837, after the passing (24th July, 1833,) of 8 & 4 W. 4, c. 27, but before the expiration of the five years allowed by section 15. He devised the land to J. for life, remainder to W. in fee. He also devised to J. an annuity charged on other land.

J. and M. occupied from 1801 to J.'s death in 1843, no rent being paid. After J.'s death, M. continued in occupation.

On ejectment brought, in 1844, by W., the remainder-man, against M., *Held*:

That W. was not entitled to insist that J. and M. had held under the devise to J.; but that M., although he had received the annuity on behalf of his wife, might rest his defence upon the occupation under the tenancy at will.

That section 15 was inapplicable, no step having been taken within the five years. And that the action was barred, under sections 2 and 7, by the lapse of 20 years from the end of one year after the commencement of the tenancy at will. *Doe d. Dayman v. Moore*, 9 Q. B. 555.

See Metropolitan Police Act.

LOCAL ACT.

Compensation for loss by changing place of business.—Certiorari.—The Hull Dock Company's Act (7 & 8 Vict. c. ciii.); giving them

power to take certain lands, provided for the payment of purchase-money, and enabled the owners of lands, or interests therein, to accept compensation for any damage by them sustained by reason of the severing of such lands, or otherwise owing to the exercise of the powers of that act. Similar language as to compensation was used in other clauses. In default of agreement between the company and landowners, the purchase-money and compensation were to be assessed by a jury, who, by section 117, were to deliver their verdict for the sum to be paid for purchase, and also the sum to be paid for the injury done to the lands of any such party by the severance of such lands from those required by the company; and also the sum to be paid by way of compensation for the damage occasioned to any such lands by the execution of the works, whether for damage sustained before the time of the inquiry, or for future damage, either temporary or permanent, or for any recurring damage, &c.; and the sums to be paid for the injury done by any such severance as aforesaid, or by way of compensation for any such damage as aforesaid, were in every case to be assessed separately from the value of the lands, &c., or the sum to be paid for the purchase thereof, &c.

Held, that the words of section 117 were large enough to include compensation to a landowner, parting with his premises, for loss which he would sustain by having to give up his business as a brewer until he could obtain other suitable premises for carrying it on. And that a verdict awarding, 1st, a sum for purchase-money, and 2ndly, a further sum as compensation for such loss, was warranted by the act.

Seem, that, if the latter part of the finding had been void for want of jurisdiction, the inquiry might have been removed by certiorari, though the act contained a clause taking away certiorari, and the verdict, as to the award of purchase-money, was good. *Jubb v. Hull Dock Company*, 9 Q. B. 443.

See *Water-rate*.

LUNATIC.

Order and certificates.—Discharge on habeas corpus.—Under statute 8 & 9 Vict. c. 100, ss. 45, 46, schedules (B.), (C.), an order for confinement of a lunatic in a licensed house, is not necessarily invalid, if the party giving it does not insert statements as to all the particulars in schedule (B.), or state expressly that he does not know them.

It is a sufficient statement, as to the "special circumstances," "preventing the insertion of any of the above particulars," that the lunatic is "constantly watched by an attendant whom she fears."

Under schedule (C.) a medical certificate is sufficient, which states, as grounds for the opinion, that the party is insane, "that she labours under delusions of various kinds;" and "that she is dirty and indecent in the extreme."

A medical practitioner, signing the certificate,

instead of the words "from the following facts or facts," inserted, "from the conversation I have had this day with the said" lunatic: *Held*, sufficient, without more.

Where, on return to a habeas corpus, it is stated, that the party confined is of unsound mind, and unfit and unsafe to be at large, the Court will not order such party to be discharged from a licensed house, though the order and certificate be not such as to fulfil the requisites of the statute 8 & 9 Vict. c. 100, ss. 45, 46, and schedules (B.) (C.) *In re Shuttleworth*, 9 Q. B. 691.

METROPOLITAN POLICE ACTS.

Limitation of actions.—The time limited for bringing actions against justices of a metropolitan police district, in respect of a conviction under statute 2 & 3 Vict. c. 47, s. 18, made in exercise of the jurisdiction given them by statute 3 & 4 Vict. c. 84, s. 6, is three calendar months, the period prescribed by statute 2 & 3 Vict. c. 71, s. 53, and not six calendar months, the period given by statute 10 Geo. 4, c. 44, s. 41.

The Metropolitan Police Acts above-mentioned are not local and personal within the meaning of statute 5 & 6 Vict. c. 97, s. 5; and therefore the times limited by the statutes respectively for the bringing of actions are not altered by that clause. *Barnett v. Cox*, 9 Q. B. 617.

Cases cited in the judgment: *Haseldine v. Grove*, 3 Q. B. 997; *Richards v. Easto*, 15 M. & W. 251.

MORTMAIN ACT.

Charitable use.—The testator devised all his real and personal estate to trustees, upon trust to sell, and, after payment of debt and legacies to invest the residue of the moneys, and to stand possessed thereof in trust to pay the annual proceeds to the testator's widow for her life; and, after her death, as to one-third, to certain charitable uses: *Held*, that, at all events, the devise to the trustees was valid during the life-time of the widow. *Young v. Groce*, 4 C. B. 668.

Cases cited in the judgment: *Arnold v. Chapman*, 1 Ves. sen., 108; *Willer v. Sandford*, 1 Ves. sen., 186; *Dee d. Burdett v. Wright*, 2 B. & Ald. 710; *Dee d. Chidegry v. Harris*, 16 M. & W. 517; 16 Law J., N.S., Exch. 180.

PARISH-RATE.

Delivery of copy "forthwith."—In an action of debt against an overseer, under statute 17 Geo. 2, c. 3, s. 3, for not giving to an inhabitant of the township, as directed by section 2, a copy of a rate "forthwith" upon demand, and offer of payment, the complaint being, that the defendant had used undue delay.

Held, that it was not the judge's duty to tell the jury, as a direction in point of law on the facts proved, that the copy was or was not given forthwith; but that he was right in leaving it to them to say, whether, under the circumstances, it had or had not been given in reasonable time, and therefore, according to

reasonable construction, "forthwith." *Thomson v. Hall*, 9 Q. B. 684.

Cases cited in the judgment: *Tennant v. Cranston*, 8 Q. B. 707; *Spenceley v. Robinson*, 3 H. & C. 658.

PROBATE DUTY.

Return in different provinces after payment of debts.—Where a testator left personal property in each of the provinces of Canterbury and York, and probates were taken out for the property being in each province respectively, and separate duties paid on each probate, and the executors afterwards paid debts indiscriminately out of the whole personality; *Held*, that they were not entitled, for the purpose of demanding a return of duty under statute 5 & 6 Vict. c. 79, s. 23, to add together the amounts in respect of which the two probate duties were paid, deduct from the gross sum the amount of the debts, and then estimate the duty payable on the remainder, and demand back the difference between such duty and the aggregate of the sums paid on the two probates.

Scnble, that an equitable mode of calculating the sum to be returned, was to apportion the sum paid for debts in the ratio of the estates in each province, and deduct the respective portions of the debts from the values of the respective estates. *Regina v. Commissioners of Stamps*, 9 Q. B. 637.

PROHIBITION.

Suit for non-residence.—*Direction in sentence as to costs.*—A proceeding in the Consistorial Court to recover penalties for non-residence, under statute 1 & 2 Vict. c. 106, ss. 82, 114, is not a criminal suit within statute 3 & 4 Vict. c. 86, s. 23, but a civil suit, and therefore is not to be instituted in the mode pointed out by section 3 of the latter act.

Scnble, that an allegation, in such proceeding for penalties, that the party complained against was and is "rector of the rectory and parish church of W.," "rightly instituted and inducted" thereto, sufficiently implies that he had a cure of souls. At least an objection to its sufficiency will not be entertained on motion for a prohibition after sentence.

Where a sentence of the Consistorial Court, in such proceeding, condemned the party charged in payment of one-third part of the actual value of his benefice, with the reasonable expense of the promoter of the suit: *Held*, on motion for a prohibition, that such sentence was valid, and consistent with stat. 1 & 2 Vict. c. 106, s. 10, though it went on to order that the amount of such third part and of such expense should "be ascertained in the usual and accustomed manner by the registrar" of the Court: it appearing that the sentence was conformable to the practice of the Consistorial Court, and that, by such practice, payment would not be enforced till the bishop had received the registrar's report of the amount, and made an order thereon. *Reekham v. Black*, 9 Q. B. 691.

RAILWAY COMPANIES.

Prudent representation on allotment of

shares.—The promoters of a projected railway company, in June, 1846, issued a prospectus stating the capital to consist of 3,000,000*l.*, in 120,000 shares of 25*l.* each, and stating, amongst other things, that application would be made for a bill to incorporate the company early in the next session; and that, in case parliament should not sanction the undertaking, the money deposited, deducting the necessary expenses attending the projection, would be returned to the shareholders.

On the 25th of September, the plaintiff made application to the provisional committee of management for 60 shares, by a letter in the form prescribed in the prospectus, undertaking to accept the same, or such less number as they might appropriate to him, *subject to the regulations of the company*, to sign the necessary legal documents, and to pay, *when required*, the deposit thereon of 1*l.* 7*s.* 6*d.* per share. The committee, by a letter dated the 11th of October, but not sent until some days after, informed the plaintiff that they had allotted him 60 shares, upon condition that the deposit of 1*l.* 7*s.* 6*d.* per share thereon was paid on or before the 18th, in default of which the allotment would be forfeited and the shares disposed of to other applicants. This letter was headed "not transferable," and, as well as the letter of application, described the concern as one having the amount of capital and the number of shares mentioned in the prospectus.

On the 17th of October, the committee published an advertisement in *The Times*, stating that "they had completed the allotment of shares." There was evidence for the jury that the plaintiff saw this notice, and he paid his deposit on the 22nd of October. On the 4th of November, the plaintiff signed the subscribers' agreement and the parliamentary contract, by which the committee were empowered, amongst other things, to apply the money received for deposits in liquidation of the preliminary expenses of the undertaking. A meeting of the shareholders was held on the 15th of December, at which the plaintiff for the first time learned, that, although applications had been made before the 17th of October, sufficient to absorb the whole 120,000 shares, 88,000 only had been allotted, and that, in consequence of the plans and sections not being duly deposited to comply with the standing orders, and the want of necessary funds, the committee were not in a condition to go to parliament. At this meeting, resolutions were proposed expressive of confidence in the committee, and of a desire to proceed. The plaintiff moved an amendment, that, as 60,000 shares only had been allotted, the deposits already received should be returned to the parties who had paid them. The chairman declined to put the amendment, and the original resolutions were carried by a large majority. On the 31st of December, the committee came to the conclusion that to proceed with the undertaking would be impracticable; and, on the 6th of January, the plaintiff brought an action for money had and received

against the defendant, a member of the committee of management, to recover back his deposit.

At the trial, the judge told the jury that the plaintiff was entitled to a verdict, if the defendant knowingly made a false representation, which was a material inducement to the plaintiff to pay the money, and if the plaintiff executed the deed under the same belief that induced him to pay the deposit.

The jury having found for the plaintiff;—*Held*, That the direction was right, and that the judge was not bound to tell the jury whether or not the letters of application and allotment constituted a valid and binding contract:

That the letter of allotment not being an unconditional acceptance of the offer made by the letter of application, the two did not constitute a contract under which the plaintiff could have been compelled to pay the deposit:

And that the plaintiff had not, by attending the meeting of the 15th of December, precluded his right to rescind the contract on the ground of fraud. *Wontner v. Shairy*, 4 C. B. 404.

2. Compensation before making tunnel.—

Trespass for breaking and entering the plaintiff's close, and making a tunnel through the same. Plea, that the close was a public highway, and that the defendants, by an act of parliament, were incorporated for the purpose of making and maintaining a railway; that, before the passing of the said act, certain plans and sections of the railway, showing the lines and levels thereof, and also books of reference containing the names of the owners of the land through which the same was intended to pass, had been deposited with clerks of the peace; that by the said act it was enacted, that, subject to the provisions of that act and the Companies' Clauses Consolidation Act and Railway Clauses Consolidation Act, it should be lawful for the defendants to make and maintain the railway in the line and upon the lands delineated and described on the said plans and in the books of reference, and to enter upon, take, and use such of the said lands as should be required for that purpose; that the said close in which, &c., was delineated and described on the said plans and in the books of reference and was and is such public highway as aforesaid; whereupon the defendants at the said times when, &c., under and by virtue of the said acts, entered upon the said close in which, &c., under the surface thereof, in order to make, and did then so make, under the said highway, a tunnel, doing as little damage as could be, and in so doing dug, excavated, and bored the close of the plaintiff, and made the tunnel in the declaration mentioned, as they lawfully might for the cause aforesaid. Replication, that the close was required to be purchased and permanently used for making and permanently maintaining the railway; that the plaintiff being the owner of the close for a term of years, subject to the user of the same as a public highway, did not at any time con-

sent that the defendants might enter upon or take the close, nor did the defendants give any notice to the plaintiff to sell and convey the same to them, or that they required the same; nor did the defendants pay the plaintiff, or deposit in the bank, any purchase-money or compensation for the interest of the plaintiff therein; that the defendants did not enter on the close for the purpose of merely surveying or taking levels, &c., but for the permanent using and taking the same to their own use; and at the said time when, &c., and thence hitherto, have used and now permanently use the close of the plaintiff for the permanent purpose of the railway. On demurrer to the replication, *Held*, that the plea afforded no justification, inasmuch as the defendants were bound, under the Lands Clauses' Consolidation Act, 8 & 9 Vict. c. 18, to make compensation before entering upon the close. *Ramsden v. Manchester, South Junction, and Altrincham Railway Company*, 1 Exch. R. 723.

3. Recovery of deposit.—In an action by an allottee of a railway company for the recovery of his deposit, it appeared that the company issued a prospectus, which stated the capital to consist of 60,000 shares of 25l. each; and the plaintiff, after having paid his deposit, executed the subscribers' agreement, which contained the usual terms as to the disposition of the deposits. At the time when he executed the deed, the deposits upon 18,160 shares only had been paid, although 35,000 shares had been allotted; which fact had not been communicated to him. *Held*, that the withholding of the above fact did not amount to such a fraud as to avoid the deed, and that the plaintiff was not entitled to recover back his deposit. *Vane v. Cobbold*, 1 Exch. R. 798.

4. Prohibited act—Special damage.—A declaration stated, that, before and at the time of the passing of the 1 Vict. c. cvii., the plaintiff was, and has ever since been, the owner of a ferry across the Mersey, from Tranmere, in the county of Chester, to Liverpool, and that by the said act the defendants were empowered to make a railway, with all necessary stations, and works connected therewith, commencing at Brook Street, in the city of Chester, and terminating at or near a certain place marked No. 34 in the plan deposited, as in the act of parliament is mentioned, being at or near Grange Lane, in Birkenhead. It then set out a section of the act whereby the company were prohibited from making a railway from the station at or near Grange Lane to, or to communicate with, Woodside Ferry, until a branch railway should have been made from the main line to Birkenhead and "Princes' Ferries." The declaration then alleged that the defendants wrongfully and fraudulently, and for the purpose of evading the act, opened a railway from the station in Grange Lane to and to communicate with the shore of the Mersey in the township of Birkenhead, between Woodside Ferry and Birkenhead Ferry, and near Woodside Ferry, and named passengers and merchandise along the same to the said station.

at Grange Lane, although no branch railway had been made from the main line to Transmere Ferry, in contempt of the act of parliament and to the plaintiff's damage of 20,000*l.* On general demurrer, — *held*, that the declaration was bad, as it did not contain any averment that the defendants made a railway to or to communicate with Woodside Ferry, or anything necessarily equivalent to such an averment. But that if it had contained such an averment, the action might have been sustained without any allegation of special damage, the act prohibited not being one merely affecting the public, but an act obviously prohibited for the special protection of a particular individual. *Chamberlayne v. Chester and Birmingham Railway Company*, 1 Exch. R. 870.

See *Joint-Stock Companies' Registration Act*.

SALE OF OFFICE.

Assessed taxes.—An agreement, whereby, — after reciting that A. had carried on the business of a law stationer at G., and also had been sub-distributor of stamps, collector of assessed taxes, &c., there, and that he had agreed with B. for the sale of the said business, and of all his good-will and interest therein to him, for the sum of 300*l.*, — A., in consideration of the said sum of 300*l.*, agreed to sell, and B. agreed to purchase, the said business of a law stationer at G.; and whereby it was further agreed that A. should not at any time after the 1st of March then next, carry on the business of a law stationer at G., or within 10 miles thereof, or collect any of the assessed taxes, &c., but would use his utmost endeavours to introduce B. to the said business and offices, is illegal and void, as being a contract for the sale of an office, within the 5 & 6 Edw. 6, c. 16, and also within the 49 G. 3, c. 126. *Hopkins v. Prescott*, 4 C. B. 578.

Case cited in the judgment: *Hearington v. Du Chetel*, 1 Bro. C. C. 124.

SCI. FA.

1. *Public officer of banking copartnership*.—The Court quashed a writ of *sci. fa.* on a judgment recovered against the public officer of a banking copartnership, which alleged that the defendant was a member "at the time of the commencement of the action in which the judgment was obtained, and at the time of the recovery and giving of the judgement, and from thence continually has been and still is a member." *Bank of Scotland v. Fenswick*, 1 Exch. R. 792.

Case cited in the judgment: *Echelle v. Treastwell*, 1 Exch. R. 371.

2. *Where a rule for a sci. fa. under the 7 G. 4, c. 26, s. 13, had been granted against persons who had formerly been partners in a banking company, the fact that the plaintiff held a collateral security from the bank, from which, with care, some fruits might be obtained, but which had not been mentioned on the application to obtain the rule, was held to be no ground for setting it aside.* *Fild v. McKee*, 5 D. & L. 348.

SCOTCH SEQUESTRATION ACT.

Warrant of protection.—A renewed warrant of protection from imprisonment under the Scotch Sequestration Act, 2 & 3 Vict. c. 41, may be signed either by the sheriff or sheriff-substitute. *Jones v. Anstruther*, 1 Exch. R. 867.

SHERIFF.

See *Interpleader*, 2, 3, 4.

SHIP REGISTRY.

Foreigner.—*Corporation*.—Under stat. 8 & 9 Vict. c. 89, a corporation within the United Kingdom, some members of which are foreigners and persons residing abroad, may register ships which are the property of such corporation. *Regina v. Arnaud*, 9 Q. B. 806.

SMUGGLING ACT.

1. *Jurisdiction of justices*.—*Party in illegal custody*.—Section 58 of the Smuggling Act, 8 & 9 Vict. c. 87, enacts, (for the purpose of giving time to prepare informations, convictions, &c.,) that, when any person shall have been detained by an officer, (empowered by section 50,) for any offence against this or any other act relating to the customs, and shall have been taken before a justice, if it appear to such justice that there is cause to detain, he is thereby authorized and required to order such person to be detained a reasonable time, and, at the expiration of such time, to be brought before any two justices, who are thereby authorized and required finally to hear and determine the matter: *Held*, that, although the justice detains the party for an unreasonable time, and he is then brought before two justices and convicted, the conviction is still valid, the jurisdiction to convict depending on section 50, and not being affected by the improper proceeding under section 58. *Van Boven*, in re, 9 Q. B. 669.

2. *Certiorari*.—*Bringing up depositions*.—By section 103 of the Smuggling Act, 8 & 9 Vict. c. 87, every warrant of commitment under this or any act relating to the customs shall be deemed valid, if it set forth an offence in the words of the act; and no such warrant shall be held void for any defect therein, if it allege a conviction of such offence, and if it appear to the Court before which the warrant is returned that the conviction proceeded on good and valid grounds. *Semble*, that if, on return of such warrant to a *habeas corpus*, the grounds of conviction are relied upon in answer to an allegation of defect in the warrant, it lies upon the party supporting the conviction to prove those grounds, and that, to do this, he must bring up the depositions by certiorari. *Van Boven*, in re, 9 Q. B. 669.

4. *Conviction*.—The Smuggling Act, 8 & 9 Vict. c. 87, s. 2, enacts, that any vessels therein described, which shall be found to have been within certain distances respectively of the coast of the United Kingdom, &c., having on board tobacco not being in a cask, &c., containing 300 lbs. weight, &c., or any tobacco

stalks, or other articles specified, shall be forfeited. Section 4 enacts, that nothing in the act contained shall render any vessel of 120 tons burden liable to forfeiture on account of any tobacco coming from certain specified places in packages of certain weights respectively, nor to render any vessel of 60 tons burden liable on account of other articles mentioned in section 2, under circumstances which are severally stated in this clause.

Section 50 enacts, that every subject of her Majesty who shall be found to have been on board any vessel liable to forfeiture under this act, being found to have been within certain distances mentioned in this act, having on board, or having had on board, such goods as subject the vessel to forfeiture, and every person not being a subject, &c., who shall be found to have been on board any vessel liable to forfeiture for any of the causes last mentioned, within one league of the coast of the United Kingdom, "shall, upon being duly convicted of any of the said offences before any two justices of the peace, be adjudged by such justices" to be imprisoned, &c. *Provido*, that any person proving to the satisfaction of any justice or justices before whom he may be brought that he was only a passenger, and had no interest in the vessel or any goods on board, shall be discharged.

Held, by *Coleridge and Erie, JJ.*, Lord Denman, C. J., *dubitante*, that, in a conviction, under section 50, for being found in a vessel liable to forfeiture under section 2; as having on board prohibited goods, it was unnecessary to negative the exceptions in section 4. *Van Boven*, *in re*, 9 Q. B. 669:

STATUTE IMPOSING PENALTY.

Negating exceptions in penal clause.—*Stumble*, per Lord Denman, C. J., that where a statute imposes penalties for an act indifferent in its own nature, and which, by the statute itself, is not an offence, if done under circumstances there specified, the informer must show it to be criminal, and for that purpose negative the circumstances under which (whether they be embodied in the penal clause or not) criminality does not attach. *Van Boven*, *in re*, 9 Q. B. 669.

TITHE COMMISSIONERS.

Liability. — Notice of action. — Venue.—*Case*.—The declaration recited that one T. A., deceased, was owner of certain lands, subject to tithes; that, during his lifetime, an award was made, and confirmed by the Tithe Commissioners, of the sums to be paid in lieu of tithes; that an apportionment of the rent-charge was made, and all expenses incident thereto were paid without dispute or difference; but that defendants, under colour of their office of Tithe Commissioners, and falsely pretending to act under the authority of the Tithe Commutation Act, wrongfully, wilfully, maliciously, and oppressively intending, by false pretence, and by a wilful and unjust perversion of the powers of the act, to compel the plaintiff to pay one F. a sum of money claimed

in respect of a certain award, not being expenses incident to the apportionment of the rent-charge in lieu of tithes, and wilfully and maliciously, &c., intending to make the plaintiff pay a certain sum as incident to the expenses of the apportionment, falsely, and without probable cause, made a certificate, by which it was certified, that a certain sum was due from the lands of T. A., deceased, of which plaintiff was their owner, for expenses incident to the apportionment, touching which a difference had arisen between the plaintiff and F.; the declaration therein averred that no difference existed; and that the sum of money was not due; and that all expenses had been paid, all of which the defendants well knew at the time they made the certificate; that, afterwards, the defendants delivered the certificate in order to be produced before two justices, in order to cause the amount mentioned in it to be levied on plaintiff's goods; that the justices granted a warrant on the production of the certificate, and a distress was levied upon plaintiff's goods.

The defendants pleaded, that the alleged grievances were committed after the passing of stat. 6 & 7 W. 4, c. 71, and 5 & 6 Vict. c. 97; and that the alleged grievances were committed under the authority of the first act, and that no written notice of action had been given one month before action.—*Verification*. Second plea: that the alleged grievances were committed after passing of an act in the last plea first mentioned, and were done under the authority of that act, and they were committed in the county of M., and not of D.—*verification*.

Held, on special demurrer to the pleas, that they were good, and that the action would lie and was proper in form. *Acland v. Buller*, 1 Exch. R. 837.

WATER RATE.

Local act.—To an action of trespass for breaking and entering plaintiff's mill and taking his goods, the defendants pleaded a justification under 1 Viet. c. lxxix., (local) that defendants, as Commissioners under the act, completed one of three reservoirs mentioned therein; that plaintiff's mill was benefitted by the supply of water therefrom; that a certain rate was made, and that the trespass was committed and the goods were taken as a distress for non-payment of the rate. The plaintiff replied, that only one reservoir had been completed. General demurrer. The 38th section enacts, that "no rate shall be levied or assessed under the provisions hereinbefore contained until the said reservoirs shall be actually made and in use, and water supplied therefrom." *Held*, on error in the Exchequer Chamber, (affirming the judgment of the Court of Exchequer,) that, upon the true construction of the act, the completion of one reservoir entitled the commissioners to levy a rate on the class of persons mentioned in the act actually benefitted by it; and therefore that the plea was good. *Slidobottom v. Commissioners of Glasgow Reservoirs*, 1 Exch. R. 627.

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OFFENCES AGAINST THE BANKRUPTCY LAWS. IMPORTANT DECISION.

THE most important decision we have yet had to record in reference to the operation of the Bankruptcy Law Consolidation Act of last Session, was pronounced at the last sitting of the Central Criminal Court. The doubt suggested in a former number,^a as to the retrospective operation of the act as regards offences committed by bankrupts antecedent to its passing, has now been determined unhesitatingly by Mr. Justice Colledge and Mr. Baron Rolfe, two of the judges of the Superior Courts, remarkable for their astuteness and judicial discretion as well as for their profound knowledge of legal principles. It is now authoritatively stated, that offences against the Bankruptcy Laws, committed previously to the passing of the 12 & 13 Vict. c. 106, are no longer punishable, the legislature having repealed the acts creating such offences, and omitted to provide that offences committed before the new act came into operation should be punished as heretofore.

The case upon which this remarkable decision is founded, was that of a draper, named Swan, against whom a fiat in bankruptcy issued in April, 1849. Swan was indicted for falsifying and mutilating his books, and making false and fraudulent entries in his books, in contemplation of bankruptcy, and with intent to defraud his creditors; and he was also indicted for obtaining goods on credit under false pretence of dealing in the ordinary course of trade, within three months preceding his bankruptcy. The two offences with which the bankrupt was charged are declared to be misdemeanours,

punishable on conviction by false imprisonment, with or without hard labour, by the 34th and 35th sections of the act 5 & 6 Vict. c. 122, respectively; and similar provisions are contained in the act of last session.^b The act of last session, however, expressly repeals the act 5 & 6 Vict. 122, except so far as relates to the appointment, removal, duties and allowance^c of certain officers, and contains no enactment with respect to offences committed before the commencement of the act. If it were allowable to guess at the intentions of the legislature, it would be difficult to suppose it could have deliberately resolved to confer complete impunity, in respect of offences committed before the new act, where the sections constituting such offences were re-enacted without any material alteration. It was well remarked, however, by the learned judges already named, that whether the omission on the part of the legislature was intentional or accidental, was a matter with which the courts of justice had nothing whatever to do. Their duty was to take care that no criminal offence was created, and no persons punished for an offence, unless under the clearly expressed sanction of the legislature. Applying these sound, rational, and constitutional principles of construction to the case under consideration, the judges concurred in opinion that the indictment against the bankrupt Swan could not be sustained, and upon being requested to reserve the point for the Court of Criminal Appeal, they declined to do so, upon the ground that the matter was so perfectly clear as to leave no doubt upon their minds.

The consequences of this decision, it would be difficult at present accurately to estimate. Assuming that it will be applied and adopted by other judicial tribunals, not

^a Vol. 38, pp. 325, 326.
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^b 12 & 13 Vict. c. 106, ss. 252 & 253.

only does the measure of last session operate as an act of indemnity to bankrupts and others in respect to offences under the bankrupt laws, committed previous to the 12th Oct. 1849, and which were punishable by indictment; but it may admit of some doubt how far the civil rights of parties accruing before the 11th of October, when the 12 & 13 Vict. c. 106, came into operation, are preserved. It is tolerably clear, according to the authority of *Surtees v. Ellison*, 9 Barn. & Cres. 750, that a trading which ceased, or an act of bankruptcy committed, before the new act took effect, will not support a petition for adjudication under it, unless the proviso in the 4th section can be construed retrospectively.^d We have even heard it doubted, if the Bankrupt Commissioners throughout the kingdom are justified in inquiring into acts of misconduct on the part of bankrupts committed before the existing law came into operation, and allowing the result of such decisions to influence them in determining to grant, refuse, or suspend a certificate. At all events, the recent decision gets rid of the doubts entertained as to the power of the Commissioners to apply the provisions of the act 12 & 13 Vict. c. 106, which create new offences to cases where it appears that the offence was committed before the commencement of the new act. Considered in any point of view, it must, we fear, be admitted that the defect pointed out in the judgment of the Court in *Swan's* case will exercise a prejudicial influence upon the trading community, and tend to render the administration of the Bankrupt Laws for some time to come, in many instances, uncertain and unsatisfactory.

To whom this capital blunder is to be especially ascribed does not concern us now particularly to inquire. It is the less excusable because, as Mr. Baron Rolfe pointed out in *Swan's* case, a similar mistake was made when the 6 Geo. 4, c. 16 was framed, and the judges of that day thought it obligatory upon them to determine the question in the same manner as it has now been de-

cided by the two judges sitting at the Old Bailey. We can only repeat what was said by Lord Tenterden in the case first cited:—"It is certainly very unfortunate that statute of so much importance should have been framed with so little attention to the consequences of some of its provisions."

RIGHT OF APPEARANCE AND ADVOCACY IN THE COUNTY COURTS.

SOME doubt has been recently suggested as to the proper construction of the 91st section of the 9 & 10 Vict. c. 95; and a question has been raised as to the right of a barrister or attorney, under that section, to appear for a party suing or sued in the County Courts. The section referred to is so clumsily framed that no one can wonder it should have begotten doubts, but when the language is closely examined and interpreted according to the ordinary rules of construction, and with a recollection of the previously existing law, it seems impossible to come to any other conclusion but that the meaning of the legislature was, that an attorney, or a barrister instructed by an attorney, is entitled to appear for a party as of right, but that no other person can so appear without the leave of the Court.

The words of so much of the section as concerns the point mooted are as follow:—

"That no person shall be entitled to appear for any other party to any proceeding in any of the said Courts, unless he be an attorney of one of her Majesty's Superior Courts of Record; or a barrister-at-law instructed by such attorney on behalf of the party; or by leave of the judge any other person allowed by the judge to appear instead of such party; but no barrister, attorney or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under this act," &c. &c.

Before the passing of the 9 & 10 Vict. barristers by custom, and attorneys both by custom and statute, were entitled to practise in any inferior Court of Law, unless expressly prohibited by act of parliament, charter or prescription. The 27th section of the 6 & 7 Vict. c. 73, gives an unqualified right to attorneys and solicitors of the inferior Courts at Westminster, to practise in all inferior Courts of Law and Equity, which of course includes all Courts constituted by act of parliament. The question, and the only question, as we conceive, is, whether the section above cited derogates from the right of the suitors of the County Court

^c See also *Hewson v. Heard*, 9 Barn. & Cres. 754, and *Palmer (assignee) v. Moore*, *ibid.*

^d The words are:—"Provided that every trading, act of bankruptcy, petitioning creditor's debt, or other matter or thing, which before the commencement of this act would have authorised proceedings in bankruptcy, shall after the commencement of this act be sufficient to authorise proceedings in bankruptcy under this act;" but these words must be taken in connection with those which precede and follow them in the same section.

when they think fit to be represented by an attorney? It will be conceded, we presume, that whenever an attorney is entitled to appear on behalf of a party to a plaint, a barrister instructed by such attorney may also appear. The right of the attorney, therefore, will determine the point in controversy. Now what is the plain and obvious intention of the words "no persons shall be entitled to appear for any other party to any proceeding in the said Courts, unless he be an attorney of one of her Majesty's Superior Courts," &c.? Clearly, as we submit, to limit the right to the attorney, but to recognize his right as fully as it would have existed if no provision was contained in the act restricting the right to practise. This enactment places the attorney precisely in the same position as the party is, if he think fit to appear on his own behalf. As we understand the language of the act, the Court can no more refuse to permit an attorney duly authorized to appear for a party, than to prevent the party appearing on his own behalf. If the "party" neither appears in his own person nor by an attorney, but chooses to be represented by another person, then the authority and discretion of the judge are to be exercised, and his permission is necessary to enable such other person to appear on behalf of the suitor. The somewhat singular provision which follows that last cited—and which no doubt has occasioned the doubt suggested in respect of this matter—when considered, in no respect conflicts with the construction we are contending for as applicable to the first branch of the section. After providing that a person not an attorney may be allowed by leave of the judge to appear instead of the suitor, the section proceeds,—“but no barrister, attorney, or other person, except by leave of the Court, shall be entitled to be heard to argue any question as counsel for any other person,” &c. This provision is wholly independent of, and as it strikes us, not inconsistent with the previous enactment already commented upon. The distinction between *appearing* for a suitor, to state a case, examine witnesses, or perform any of the ordinary duties of an attorney or advocate, and *arguing a question*, is sufficiently obvious not to require illustration. It may well be supposed that the legislature considered that these Courts of summary jurisdiction could not be conveniently converted into an arena for elaborate legal arguments, which are sometimes tedious as well as learned, and invested the judge with undoubted authority to prevent

or cut short such arguments, whether indulged in by barrister, attorney, or other person, at the same time reserving to the suitor the full enjoyment of the right to appoint an attorney to appear for him in any proceeding, and when he thinks fit, to be represented through the attorney by a barrister. This appears to be the plain, simple construction of the section under consideration, which is in no degree affected by any opinion that might be entertained as to the inexpediency of limiting the right to argue questions, or as to the insufficiency of the reasons suggested for that remarkable and objectionable provision.

NEW TRIALS FOR ALLEGED MIS-DIRECTION.

I CONSIDER one of the great defects in the administration of justice in the present day to be the applications for new trials on the ground of some imaginary misdirection of the presiding judge. This evil calls for a prompt and speedy remedy, and of the efficacy of which I entertain little doubt.

A plaintiff commences his action, which is tried at the assizes, probably at a distance of some 200 or 300 miles from the metropolis; the defendant takes his witnesses that distance, and incurs an enormous expense, and obtains a verdict. In the ensuing Term the plaintiff, without any notice to the defendant and behind his back, obtains a rule *nisi* for a new trial on the ground of some fancied misdirection. This rule is obtained *ostensibly* for the purpose of a new trial, but in *truth* the object is to create a delay of some 18 months or two years, as it is well known that in the Queen's Bench such rules are seldom disposed of in less time.

The remedy which I would propose would be, to require the party objecting to the directions of the presiding judge to tender a bill of exceptions, and that if he fail to do so, he shall be precluded from obtaining a rule *nisi* for a new trial.

The Courts have frequently lamented the enormous expenses incurred under such circumstances, and have not unfrequently suggested the remedy. In the case of *Willoughby v. Willoughby*, 9 Adol. & Ellis, 923, Lord Denman, in full Court, said,—“The defendant, however, has a right to question this direction, and we would suggest, for saving expense and delay, that he should now be at liberty to tender a bill of exceptions and have the same opportunity of arguing it on a writ of error as if our present opinion had been declared at the trial and the jury directed accordingly. Unless this is agreed to, the rule for a new trial will be made absolute.” No further proceedings have hitherto been taken.

Presuming a matter of such importance compatible with the duties of the Incorporated Law Society, which has already effected much good,

let me hope that they will take the matter into consideration and propose to the Courts a new rule on the subject. It is obvious that, by adopting a bill of exceptions, in very many instances the ruinous expenses attending a second trial are avoided. Doubtless, in many cases, the object is to keep the successful party out of his costs, and to enable the losing party to dispose of his property. See the benefit of the modern Statute of Frauds and Perjuries—the Insolvent Debtors' Act.

CIVIS.

THE CHANCERY STUDENT'S GUIDE.

THIS little work appears in the form of a Didactic Poem, setting forth the outline and leading features of a Chancery Suit from beginning to end, with an enumeration of the times within which the various steps and proceedings should be taken according to the latest orders.*

The author's object as stated in the Introduction, is thus described :—

"To present to the reader's eye and senses, at almost a glance, the outline (that is, the leading and prominent features) of a Suit in Chancery. It was far from the Author's object to diverge into all the minute and adventitious details of a suit; to have done this would have defeated his object, which was to impress upon the Student's mind, through the interesting instrumentality of verse and rhyme, and the licence and concentration of subject which, if judicially managed, it allows, a perfect outline and idea of a Chancery Suit, embodying and accurately detailing the various Times allowed, according to the authorities, for the different steps and proceedings therein.

"The Student having arrived at this general knowledge would, the author conceives, be the better prepared, and would feel greater pleasure and profit in resorting to the dry and bulky books of practice for those collateral and more minute details, which, starting at once upon a mind unfurnished with preliminary ideas, are calculated, revolutionised and redundant as the practice has now become, to bewilder and disgust.

"The Author feels that he has had a dry subject to handle, for which he hopes due allowance will be made; he ventures, however, to think that not alone professional Students, including such as are preparing for their Town Examination previous to admittance, but the Public at large may not, under the circumstances of the present time, when Chancery affairs have a certain interest, feel indisposed to look into his little book; at all events it might assist in giving the latter, by furnishing them with general ideas, some little controul over their solicitors, which, for the lack of this knowledge, at present they have not.

"The Author may be permitted further to remark, that the Country Solicitors, to whom the Chancery Practice, from its redundant, various and uninviting aspect is, in a great measure, a sealed book, would find the possession of this little work enable them, with greater facility, to second the efforts of their Town Agents in bringing a suit to a speedy and satisfactory termination;—the backwardness of many country solicitors in this respect is frequently a greater cause of the delays in Chancery than the country at large is aware of."

As an example of the learned Poet's work, we extract the following :—

"Now let's suppose relief be sought
By some one i' the Chanc'ry Court,
The Plaintiff, much against his will,
Doth straightway file a Chanc'ry BILL,
And pray SUBPENA Writ (his right),
A process which begins the fight—
Writ serv'd, Defendant should, it's clear,
Within *eight days* in Court APPEAR;
Excluding, be 't well observ'd,
The day on which the Writ is serv'd—
But should Defendant not appear,
Attachment goes, to bring him near—
Or Plaintiff may, an't please his whim,
Within *three weeks* appear for him;
From thence to ANSWER Bill in time
Six weeks he hath, believe my rhyme;
But should he wish a further space,
And Master ask with brazen face,
He'll give him surely *three weeks more*,
Or e'en a month, if him he bore;
But should the Answer not come in,
ATTACHMENT goes for this great sin.—
But where Defendant doth abscond,
Or jurisdiction lives beyond,
The rule of practice doth provide
A remedy, and certain guide.—
If Answer meets with approbation,
Then Plaintiff files a REPLICATION,
The time allow'd for which, behold,
Is *ten weeks*, from the Answer told;—
But if the Answer fails in truth,
The Plaintiff may except forsooth;
Provided he EXCEPTIONS take
Within *six weeks* for practice sake;
But if he lets this time run out,
The Answer's good beyond a doubt.—
Should Answer different case forthsend,
The Plaintiff may his BILL AMEND;
Provided he an Order win
In *ten weeks* after Answer's in.
And here he may two ends combine:
For sake of sparing cash and time;
For if he doth EXCEPTIONS take
And then in's Bill amendments make,
He may, to save a deal of bother,
An answer crave to one and t'other.—
Exceptions fil'd, Defendant may
Within *eight days* say yea or nay,
Whether he will SUMMIT to file
A further Answer, free from guile;
If yea, within *three weeks* it must
Upon the Chanc'ry file be thrust;
If nay, a reference Plaintiff prays,

* By Terentius Carrighan, Solicitor. Wildy and Sons.

Which must be got in *fourteen days*,
And also in like space of time
Report, deciding whether, in fine,
The Answer, which the Plaintiff's got,
Is good enough, or whether or not.—
But where Exception's shown for Cause
To save injunction for a pause,
Report in *four days* must be had
From Order's date, or else it's bad.—
Should Second Answer prove not good,
In any point wherein it should,
On th' OLD EXCEPTIONS you may go
To self same Master, as I trow;
But th' Order must appear in sight
In *fourteen days*, to make it right.
Now should the Master truly find
The Answer's bad in any kind,
He then appoints a time within
The FURTHER ANSWER must come in.
In case before the Answer's in
The Bill's AMENDED; then begin
To take again the *six weeks* time
To answer Bill, for it is thine—
The six weeks count, be it observed,
From notice of Amendment serv'd;
But if the Bill amended be
After Answer, and, d'y'e see,
The Plaintiff, being well content,
On further Plea is not intent;
Defendant then has *eight days'* time
To answer, if he so incline.
But would the Plaintiff, (ill at ease),
From out Defendant's conscience squeeze,
A FURTHER ANSWER; then he must
Subpens serve, as at the first.
Now *four weeks'* time's allow'd, with skill
To answer this AMENDED BILL—
But when the Plaintiff doth obtain
An Order to amend, there's blame,
Unless in *fourteen days* of time
He doth amend the faulty line;
But when the amending Order's made
In mode whereby Injunction's sav'd,
Then each Amendment he must state
In *seven days'* time from Order's date;
But should Defendant much prefer
To answer not, but yet DEMUR,
Twelve days he has from time when he
Appear'd to Bill, and paid the fee.
DEMURRER fil'd, it's Plaintiff's place
To set it down in *twelve days'* space;
But, should a PLEA the pleadings crown,
Within *three weeks* he sets it down."

EXCLUSIVE AUDIENCE OF THE BAR IN INSOLVENCY CASES IN COUNTY COURTS.

As all information on this subject will be interesting to our readers, we subjoin a report from the *Bristol Times*, of a case before Mr. Palmer, the judge of the County Court of Bristol, on the 21st July, 1843:—

In re William Verrill, Insolvent.

On this case being called on, Mr. Graves said, he appeared to support the insolvent. Mr. Henry Brittan said, he appeared to oppose on behalf of Mr. F. C. Wesley, of London, a creditor to the amount of 106*l.* 4*s.* 3*d.*

Mr. Graves objected to Mr. Wesley's opposition, unless he appeared in person, as he wished to put some questions to him.

The Judge stated that it was a rule of the Court that a creditor could not appear by attorney—he must employ counsel.

Mr. Brittan replied that, if such were the case, he must fold up his papers and retire; that there was no such rule in the Bankruptcy Court. Attorneys were there allowed to appear, and such was the practice in these cases before they were transferred from the Bankruptcy Court to this Court.

The Judge would not allow the Bankruptcy Court to be cited as a Court which was to govern the practice of this Court; he had the highest respect for the judges of that Court, but that it was not a Court of appeal for this Court. The rule had been established by the Insolvent Debtors' Court in London, and was, he believed, acted upon in the County Courts throughout the kingdom. If Mr. Brittan had come into Court in ignorance of the rule, he would give him time to instruct counsel.

Mr. Brittan replied, that he should decline to do so; that his client's loss had already been sufficiently great, and he would not go to such an unnecessary expense in so trifling an estate, and that such a rule amounted in these cases to a denial of justice.

The Judge could not allow the last observation to pass without notice. He could not permit it to be said that any rule of this Court amounted to a denial of justice. He had the greatest respect for Mr. Brittan, who was a gentleman of the highest rank and talents in his profession, and whose observations were entitled to the greatest consideration, and therefore he was the more bound to remark upon what he had said. This matter had been much discussed before, and had been written upon; and he had replied from that judgment seat. If Mr. Wesley could afford to employ a gentleman of Mr. Brittan's standing, talents, and respectability, for which of course he would have proportionably to pay, could he not afford the additional expense of employing counsel? Besides, in this case, Mr. Wesley was a creditor for upwards of 100*l.*, and was it not too much to say that the mere fee to counsel in such a case operated as a denial of justice?—Besides, if the opposition were successful, the costs might probably be ordered to be paid out of the estate. He should adhere to the rule, and the insolvent was entitled to his protection.

Mr. Brittan said, he could answer the observations of the Court, but as he knew his abiding would be considered indecorous, and would not be permitted, he must of course hold those observations without reply.

The following are the remarks of the

editor of the *Bristol Times* on this extraordinary decision:—

BRISTOL COUNTY COURT.—PRACTICE IN INSOLVENCY.

A case which occupied the County Court yesterday exemplifies the hardship entailed upon the public by the rule established in this Court, giving a right of pre-audience to counsel in cases of insolvency.

"An insolvent owing debts amounting to less than 300*l.* had petitioned the Court for protection, and a creditor residing in London, to whom he was indebted in nearly one-half of his total liabilities, had instructed his solicitor Mr. H. Brittan, of this city, to oppose the allowance of protection to the insolvent. Mr. Brittan attended accordingly, and was about to fulfil the duty entrusted to him, when the learned judge taking judicial notice of, and directing that of Mr. Brittan to, the fact that three learned counsel were present, intimated that he could not hear Mr. Brittan. Mr. Brittan ventured a remonstrance, when the learned judge again explained his rule, and again suggested that, as three learned gentlemen were present, Mr. Brittan could have no difficulty. Mr. Brittan, however, seemed to feel a difficulty, but whether on account of the quality or cost of the learning wooing his acceptance we are unable to guess. He again remonstrated—pointed out that his client in London expected from him the performance of a duty, and had not authorized him to incur the expense of instructing counsel, and again urged his claim to be heard. The learned judge replied that the rule was that of the Insolvency Court, that it had been established here, had been discussed and written upon, and he had replied "from that judgment-seat," and it would therefore be acted upon. Mr. Brittan rejoined stating the practice in bankruptcy, which the learned judge pooh-poohed as that of an inferior jurisdiction, not to be followed by him; and ultimately Mr. Brittan, referring to the circumstance of his client living in London, and the nature of his instructions, asserted that the refusal to hear him amounted to a "denial of justice." Upon this the learned judge, reproving Mr. Brittan for the expression, and telling him that if uttered by the learned leader of the Bar, Mr. Graves, it would have met with reprehension, declared his final determination not to hear Mr. Brittan, and accordingly the insolvent passed unopposed, obtained his protection, and is in a position to snap his fingers at his London creditor, who we imagine will think very much with his attorney in looking upon the transaction as a "denial of justice."

We are informed that at the following County Courts no such practice prevails as that established by Mr. Palmer:—Cumberland, Devonshire, Lincolnshire, Suffolk, Staffordshire, Liverpool. But at Gloucester exclusive audience is given if two Barristers are present.

We have not yet heard from other Districts, and beg our readers will communicate any information they possess on the subject,

MASTERS EXTRAORDINARY IN CHANCERY.

From Nov. 20, 1849, to Dec. 21, 1849, both inclusive, with dates when gazetted.

Bagshaw, John, jun., Manchester. Dec. 7.
Barret, Edward Alexander, Bradford, Yorkshire. Nov. 23.
Cartmale, John, Lichfield. Nov. 23.
Cox, Peter, jun., Beaminster. Dec. 4.
Douglas, Robert, Tweedmouth. Nov. 27.
Dutton, William Henry, Newcastle-under-Lyne. Dec. 7.
Fellows, John Butler, Calne. Dec. 14.
Fielding, George, Dover. Dec. 18.
Hawkes, Henry, Birmingham. Dec. 7.
Johnson, John Henry, Glasgow, (for Scotland). Nov. 20.
Kift, Thomas, Dublin, (for Ireland) Nov. 20.
Nalder, George William, Long Ashton, near Bristol. Dec. 18.
Norwood, Edward, Charing. Dec. 14.
Norwood, John Dobree, Ashford. Dec. 14.
Shugar, John Merritt, Portsmouth. Dec. 21.
Southall, Thomas, Worcester. Nov. 30.
Webster, Henry, Sheffield. Dec. 4.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Nov. 20, 1849, to Dec. 21st, 1849, both inclusive, with dates when gazetted.

Gillam, Robert, jun., and Benjamin Thomas, Birmingham, Attorneys and Solicitors. Dec. 4.
Weedon, John, and William Slocombe, Reading, Attorneys and Solicitors. Dec. 7.

PERPETUAL COMMISSIONERS.

Appointed under the Fines' and Recoveries' Act, with dates when gazetted.

Birkett, James, Liverpool, in and for the County of Lancaster. Nov. 20.
Nicholas, John Leach, Monmouth, in and for the County of Monmouth, also in and for the Counties of Gloucester and Hereford. Nov. 20.
Wilson, Frederic William, Sheffield, in and for the West Riding of the County of York. Dec. 7.

LAW APPOINTMENT.

THE Queen has been pleased to appoint James O'Dowd, Esq., to be her Majesty's Solicitor-General for the Island of Tabago.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Stiles v. Guy. Nov. 12, 1849.

EXECUTORS.—LIABILITY FOR CO-EXECUTOR'S DEVASTAVIT.

Held, affirming the decision of the Vice-Chancellor of England, that executors who have proved a will are liable for the due execution of the trusts thereof, and will be accountable for a devastavit committed by a co-executor, notwithstanding any clause of indemnity in the will contained.

THE testator, John Tuckey, who died in September, 1823, by his will, bequeathed his real and personal estate to Anthony Guy, Richard Tuckey, and Richard Tuckey, jun., who were also appointed executors, upon trust, as soon as convenient after his death, to convert into money, and apply to the purposes of the will, such part thereof as consisted of book-debts or of securities for money not approved of by them, and a proviso was added, that they should be accountable for no more than they should each respectively receive, and each for his own acts, receipts, and wilful default only, and that none should be accountable for the insufficiency of the securities on which the trust-moneys were invested. The will was proved by the three executors. At the testator's death, Mr. Guy, who was a solicitor, had money amounting to upwards of 10,000*l.* in his hands, for which the testator had bills of hand and accountable receipts, and the management of the estate was left to him. Mrs. Siles, one of the *cestuis que trustent*, applied in 1829 for her share of the estate, and then filed this bill to administer on the equity side of the Court of Exchequer against the executors. The defendants put in their answers, setting forth that the *cestuis que trustent* had acquiesced in the money remaining in Mr. Guy's hands, and a reference to the Master was made thereon, (4 Y. & C. Eq. Exch. 571.) but by the report in 1847, the Master found that there was no acquiescence. Guy had admitted, by his answer, a debt of 6,100*l.*, and an order was obtained for the payment thereof into Court, which was enlarged, and subsequently Guy was declared a bankrupt. Upon exceptions to the report, the Vice-Chancellor, to whom the cause had been transferred in June, 1848, disallowed them, and ordered the co-executors to pay into Court, with interest at 4 per cent. from the testator's death, the sum of 12,900*l.* From this order the defendants now appealed.

The Lord Chancellor, after taking time to consider, said, the executors were bound to use all due diligence in getting in their testator's estate, and the acquiescence of executors in a devastavit committed by a co-executor rendered them liable. By proving the will, they had become responsible for the management of the estate, notwithstanding the clause of indemnity in the will: *Chambers v. Minchin*, 7 Ves. 198; *Brice v. Stokes*, 11 Ves. 319; *Mucklow v. Ful-*

ler, Jacob, 198: *Booth v. Booth*, 1 Beav. 125; *Lincoln v. Wright*, 4 Beav. 427. The decree of the Court below would therefore be affirmed, with costs.

De Visme v. De Visme. Nov. 12, 13, 1849.

VENDOR AND PURCHASER.—PURCHASE-MONEY.—INTEREST.

Held, reversing the order of the Vice-Chancellor Wigram, that a reference would be granted to inquire the time of the vendor's delivering an abstract of title and from what time the purchaser was to pay interest where the purchaser, according to the conditions of sale, was to pay interest at 5 per cent. from a certain day, and the abstract of title had been delivered after the day appointed by the conditions.

THIS was a petition for a reference to the Master to inquire what compensation was due to the purchaser of an estate, the abstract of title of which was not delivered within the time specified in the conditions of sale, in respect of the difference of interest between 5 per cent. and 2½, which was the interest the purchaser, who had his money lying in a county bank and had given notice thereof to the vendor's solicitor, had only obtained. The estate was put up for sale in lots under a decree in the above cause, and on 3rd September, 1845, Mr. Hooke, since deceased, became the purchaser of one lot, paying a deposit of 20 per cent. An abstract of title was, according to the conditions of sale, to be delivered within three days of the Master's confirming the sale, and in the event of the purchaser failing to pay into Court the whole of the purchase-money on a certain day from any cause, he was to pay interest at the rate of 5 per cent. The vendor only delivered his abstract in July, 1847, Mr. Hooke having in November, 1845, given the vendor's solicitor notice that the purchase-money was ready in a country bank, and that he would hold the vendor liable for the difference of interest between 2½, which the bankers paid, and 5 per cent., until the delivery of the abstract of title. The purchaser accepted the title, obtained an order to pay the purchase-money into Court with interest at 5 per cent., and was let into possession without prejudice to the present claim for the difference of interest occasioned by the vendor's delay. The Vice-Chancellor Wigram having dismissed the petition, this appeal was presented.

The Solicitor-General and Shapter, for the appeal, cited *Paton v. Rogers*, 6 Madd. 256; *Denning v. Henderson*, 1 De Gex & S. 689; *Hobson v. Bell*, 2 Beav. 17; *Jones v. Mudd*, 4 Russ. 118.

Rolt and Greene, contra, cited *Esdaile v. Stephenson*, 1 S. & Stu. 122.

The Lord Chancellor said, the ordinary rule, where there was no contract, was, that from the time the title is shown the purchaser pays interest on the purchase-money remaining un-

paid. If the vendor had failed to deliver the abstract as soon as he might, the purchaser was entitled to compensation for loss sustained thereby. A reference would therefore be made to ascertain the time of the delivery of the abstract and from what period interest to be paid.*

Scarf v. Saulby. Nov. 21, 24, 1849.

VOLUNTARY SETTLEMENT. — CREDITOR'S SUIT TO SET ASIDE.

Held, reversing the decision of the Vice-Chancellor of England, that being indebted at the time of making a settlement in consideration of past cohabitation, is insufficient to set it aside under 13 Eliz. c. 5, without evidence of an intention to defraud the creditors; but a reference was directed as to debts due from the settlor at the time of making the settlement.

JOHN MILNER, a woollen-draper and since a stock-broker, by an indenture dated December, 1842, assigned two policies of insurance on his life, amounting to about 5,000*l.*, undertaking at the same time to pay the premiums thereon, to Eliza Quilton and her four children, in consideration of a past cohabitation which was then discontinued, in order to provide for them an annuity of 250*l.* Upon the death of the assignor, in 1846, this bill was filed by Scarf, who had been his clerk and to whom he owed 200*l.*, and Mitchell, a grocer to whom Milner owed 30*l.*, on behalf of themselves and all the other creditors against the executors, Mrs. Quilton and her children, to avoid the deed on the ground that the assignor was in embarrassed circumstances and largely indebted at the time of its execution. The Vice-Chancellor of England having decreed the policies of insurance to be available assets for the payment of the debts, this appeal was now presented.

Stuart, J. Parker, and Younge, for the respondents, cited 13 Eliz. c. 5; *Russell v. Hammond*, 1 Atk. 13; *Walker v. Burrows*, 1 Atk. 98; *Stephens v. Olive*, 2 Bro. C. C. 90; *Lord Townshend v. Windham*, 2 Ves., sen. 1; *Kidney v. Cousmaker*, 12 Ves. 136; *Richardson v. Smallwood, Jacob*, 569.

Bethell and Southgate for the appellants, citing *Lush v. Wilkinson*, 5 Ves. 384; *Townsend v. Westacott*, 2 Beav. 340.

F. J. Hall for the executors.

The Lord Chancellor said, that being merely indebted was insufficient *per se* under the 13 Eliz. c. 5, to set aside a settlement without evidence of an intention to defraud the creditors. As, however, if the appeal were dismissed, no other suit could be instituted by other creditors, the course adopted in *Kidney v. Cous-*

maker and Richardson v. Smallwood, cited at bar, would be followed, and an inquiry directed as to what debts, if any, were due by the assignor at the date of the settlement.

In re St. Michael's, Shrewsbury. Nov. 26, 1849.

LUNATIC. — PAYMENT OUT OF COURT OF MONEY TO RELATIVES.

*An order was made for the payment out of Court, without a reference to the Master, to the relatives of a lunatic entitled thereto, who was under their care, but not so found by commission, upon an affidavit of these facts, of a sum of 100*l.* paid into Court under the 8 Vict. c. 18.*

THIS was an application for payment out of Court, without a reference to the Master, to the relatives of a lunatic entitled thereto under their care, but not so found by commission, of a sum of 100*l.* paid into Court under the 8 Vict. c. 18, for lands taken for the purposes of a railway.

Roll, in support, produced an affidavit of the above facts, citing *In re Gandy*, 5 M. & Cr. 111.

The Lord Chancellor made the order.

Caton v. Rideout. Dec. 5, 1849.

HUSBAND AND WIFE. — SEPARATE ESTATE.

Held, overruling the judgment of Vice-Chancellor Bruce, that a balance of monies received by the husband on account of the wife's separate estate, and remaining in the hands of a banker in his name at the time of his death, belonged to his executor, and that the wife surviving had no claim upon it, although the account had been kept distinct from his own account, and consisted entirely of monies received from the income of the wife's separate estate.

THIS suit was instituted for the administration of the estate of the Rev. Mr. Rideout, formerly of Woodmancote, Sussex, who died in the year 1838, having appointed the defendant, his widow his executrix, the plaintiff claiming a debt as a bond creditor. On the hearing of the cause, the usual decree was made for a reference to the Master to take an account of the testator's personal estate, under which the plaintiff carried in a charge consisting of various items, and amongst them, of a sum of 55*l.* 8*s.* 10*d.* From the evidence adduced before the Master, it appeared that the defendant was entitled to the dividends of a sum of 40,000*l.* which was settled to her separate use, and that these were paid half-yearly, with her concurrence, to her late husband, who paid them into the bank of Messrs. Child, to his own account, and that he from time to time drew cheques for the moneys so paid in. The deceased had two other bankers of his own, and the account at Messrs. Childs consisted solely of the monies received on account of the defendant's separate estate. At the time of his

* It was subsequently agreed that the purchaser should account for the rents and profits of the estate since he was let into possession to the vendor, who would thereupon repay the interest paid into Court—costs of all parties to some out of the purchase-money.

death, the 55*l.* ss. 1*sd.*, was the balance in their hands received on account of these monies. The Master, in taking the accounts of the testator's estate, had charged the defendant with this sum as part of such estate, and the defendant having excepted to the report, on the ground of its being her own property, the case was argued before Vice-Chancellor Knight Bruce on the 21st of July, 1849, when his honour allowed the exceptions. From this judgment the plaintiff appealed.

Rolt and *Green*, in support of the appeal; *J. Parker* and *S. Miller*, for the respondent, contended, that the Vice-Chancellor's decision was in accordance with the principles recognized in *Miles v. Bask*, 2 Ves., jun., 488; *Rick v. Cockell*, 9 Ves. 369; *Parkes v. White*, 11 Ves. 209; in the latter of which cases Lord Eldon intimated that the husband might be required to account for rents and profits of his wife's estate, although they were living together, provided the account did not go back for more than a year. In this case the balance claimed by the defendant did not amount to half-a-year's dividends.

The Lord Chancellor said, the dividends had been paid to Mr. Rideout with the full concurrence, and by the direction of the defendant, which she was entitled to give. The account to which they were placed was always under his control, and if monies so paid to the husband were afterwards to be recovered from his estate, that would be giving an account against the husband, which the Court would not permit. The appeal must therefore be allowed.*

Dec. 19.—*Duke of Beaufort v. Morris*—Stand over to Hilary Term.

—19, 20.—*Reid v. Langlois*—Order of Vice-Chancellor of England for production of documents in part discharged.

—20.—*Boothby v. Boothby*—Appeal allowed.

—20, 21.—*In re Wills, Somerset, and Weymouth Railway Co., ex parte Fooks*—Appeal from the Vice-Chancellor of England dismissed.

—21, 22.—*Hunter v. Nockolds*—Cur. ad. vult.

—22.—*Rackham v. Siddall*—Decree of Vice-Chancellor of England varied.

—22.—*In re Conithard*—Master's report confirmed, and reference as to lunatic's maintenance since former order.

—22.—*In re Fisher*—Judgment as to costs.

Rolls Court.

Dec. 19.—*Shallcross v. Weaver*—Order for production of deeds.

—19.—*Ranken and another v. East and West India Docks Company*—Injunction to restrain defendants from prosecuting works of railway until the value of the plaintiffs' interest had been ascertained and paid.

—19.—*In re Edridge*—Order discharged

* This case confirms the decision of the Vice-Chancellor of England in *Beresford v. Archbishop of Armagh*, 13 Sim. 643.

for delivery of solicitor's bill within 14 days from service of order, where he had been employed not as a solicitor but as agent to pay certain sums due on a mortgage.

—20.—*In re Haigh*—Petition dismissed without costs.

—21.—*Knight v. Boughton*—Representatives of widow held entitled to apportionment of rents since accrued due.

—21.—*In re Williams*—Judgment on construction of marriage settlement—Costs to be paid out of estate.

—21.—*Douglas v. Andrews*—Reference to the Master as to maintenance of certain infant children.

—22.—*Wilson v. Eden and others*—Stand over, with leave to amend petition in 14 days.

—22.—*Buchanan v. Greenway*—Order for account in foreclosure suit between mortgagor and mortgagee.

—22.—*Harvey v. Kurts*—Order by consent.

Vice-Chancellor of England.

In re Wright's Trusts. Nov. 23, 1849.

FURTHER TRUSTEES' RELIEF ACT, 1849.—DISSENTIENT TRUSTEE.—SERVICE.—PRACTICE.

Held, that it is necessary to serve a trustee not concurring in the payment into Court of the trust monies by a majority of trustees under the 10 & 11 Vict. c. 96, as amended by the 12 & 13 Vict. c. 74.

Two, out of the three, trustees of the above trust, were desirous of paying the funds into Court under the 10 & 11 Vict. c. 96, as amended by the 12 & 13 Vict. c. 74, by the first section of which the Court of Chancery may, upon the application of a majority of the trustees, order payment or transfer of trust monies, stocks, or securities, into the Court of Chancery.

Metcalf said, the act was silent on the question, whether it was necessary to serve the dissentient trustee.

The Vice-Chancellor held, that it was necessary to serve the third trustee.

Dec. 21.—*Anon.*—Special injunction restraining solicitor from communicating information received in his character as solicitor.

—20, 21, 22.—*Clarke v. Vernon*—Order on custody of infants and reference as to education.

—22.—*Baretto v. Masters*—Motion for injunction dismissed with costs.

Vice-Chancellor Knight Bruce.

Esparte Sheward. Nov. 16, 21, 1849.

BANKRUPTCY CONSOLIDATION ACT.—BOND.—DISCRETION OF COMMISSIONER.

Seemle, that it is not discretionary on the Commissioner to dispense with the bond required by the 12 & 13 Vict. c. 106, s. 79, although the trader swears to his belief to a good defence on the merits.

THIS was an application on behalf of a trader

who had been summoned before Mr. Commissioner Goulburn, under the 12 & 13 Vict. c. 106, s. 78, to discharge an order made by the Commissioner under the 79th section, requiring the trader to enter into a bond with sureties, he having sworn that he had a good defence upon the merits. (*Ante*, p. 108.)

J. V. Price for the trader; *Goodeve* for the creditor.

The Vice-Chancellor enlarged the time for giving the bond till Nov. 22, and directed the *viduo* examination to take place on the 21st, of the trader and creditor. And upon their examination declined to interfere, and dismissed the appeal.

Dec. 19.—*Esparte Earl of Mansfield, in re Universal Salvage Company*—Held that Lord Mansfield's name was properly inserted on list of contributories in respect of 10 shares.

—19.—*Esparte Woodfall, in re Universal Salvage Company*—Master's decision excluding Mr. Woodfall's name from list of contributories affirmed—Costs to be paid out of general estate.

—19.—*Nash v. Carman*—Motion for injunction to stand over in order to establish validity of patent at law—Accounts in the meantime of the sale to be kept.

—19.—*In re German Mining Company*—Stand over to Hilary Term.

—19.—*In re Higginson and another, ex parte Hinde*—Proof against joint estate refused, and judgment as to title to certain railway shares.

—20.—*In re Lovett's Exhibitions in Sidney Sussex College, Cambridge*—Appointment as new trustees, of the masters and fellows, and provision for future vacancies.

—20.—*Esparte Walker, in re Defaure's Trusts*—Order for trustee's assignees to transfer trust fund.

—20.—*In re Madrid and Valencia Railway Company*—Order for winding up—One set of costs only to be allowed, but reserved on the question of priority.

—20.—*In re Wheel Mining Company*—Order for winding up.

—21.—*Esparte Higginson, in re Higginson*—Petition dismissed for appointment of inspector to protect claimants' interests on separate estate.

—21.—*Esparte Lawrence, in re Whinnery*—Order and certificate discharged of district Court registrar under 12 & 13 Vict. c. 106, s. 27, in the Commissioner's absence.

—21.—*Esparte Nairne, in re Nairne*—Stand over.

—22.—*Esparte Sanderson, in re North of England Joint-Stock Banking Company*—Motion for re-hearing refused—Costs to be paid out of fund.

—22.—*In re St. George's Steam Packet Company*—Part heard.

—22.—*In re North Staffordshire Railway Company v. London and North Western Railway Company*—Stand over to Hilary Term.

Dec. 22.—*Esparte Smallbone, in re Universal Salvage Company*—Order for Master to review his report on exclusion of shareholder from list of contributories.

—22.—*Williams v. Sheard*—Stand over to establish right at law.

Vice-Chancellor Wigram.

Attorney-Gen. v. Lawes. Nov. 19, 20, 1849.

CHARITY BEQUEST.—VALIDITY.—COSTS.

Upon a question as to the validity of a charitable bequest between the particular legatees and the parties entitled to the residuary estate, the bequest was held valid and a reference for a scheme directed.

Held, also, that where a litigation arises between the particular legatees and the residuary legatees as to the validity of such bequest—the costs are to be borne by the general estate, and not by the particular estate; *secus*, where the litigation had reference to the particular fund after its severance from the general estate.

ANN Burrell, of Southall, Middlesex, by her will directed her executors to pay Messrs. Drummond & Co., bankers, a clear yearly sum of 100*l.* for the sole use and benefit of any of the ministers and members of the churches now forming upon the apostolical doctrines brought forward by the late Edward Irving, whomay be persecuted, aggrieved, or in poverty, for preaching or upholding the same; or half the sum may be appropriated for the benefit of the church founded by the late Mr. Irving in Newman-street. This information was filed at the relation of the ministers of the churches founded by the late Mr. Irving, and a reference was directed as to the doctrines in question, and whether there were any and what persons answering the description in the will and as to the church in Newman-street. The Master having made his report,

The Solicitor-General, R. Palmer, and Toller, for the relators, contended, that the gift ought to be established as a charity which the Court would administer, and that it was unnecessary to direct a reference as to the scheme.

Kenyon Parker and Bovill, for the defendant, the residuary legatees and administrators under the will, argued that the bequest was too indefinite as regarded the objects of the charity, and besides it was a mere benevolence to individuals.

The Vice-Chancellor, however, held, that the bequest was valid, and directed a reference to settle the scheme for the disposal thereof. With reference to costs, the general rule was that where the litigation had reference to a particular fund after its severance from the general estate, the costs thereof must be borne by that particular fund, but where the litigation arose between parties claiming the particular fund, and the party entitled to the residuary estate, such a severance had not taken place, and in that case the costs must be borne by the general estate, and the mere payment over of the residue made no difference.

Dec. 19.—*Cumming v. Ramney Railway Co.*—Injunction to restrain defendants from taking possession, staking out and removing the soil from land, refused as to those portions already taken possession of, but granted as to the rest.

—19.—*East and West India Dock and Birmingham Junction Railway Company v. Paterson*—Injunction to restrain proceedings under 8 Vict. c. 18, s. 68, in respect of defendant's lands being injuriously affected, with leave to bring action for the alleged damage.

—19.—*Johanson v. Wallcott*—Injunction to restrain defendant from entering upon lands of which plaintiff claimed to be tenant in common, and from cutting down timber, upon plaintiff's undertaking to appear upon short notice.

—20.—*Griffiths v. Lenell, Griffiths v. Richards*—Bill dismissed with costs.

—20.—*Attorney-General v. Rivas*—Petitioner allowed to attend the Master on the proof of right to charity bequest at their own expense.

—20.—*Tippings v. Coates*—Cur. ad. vult.

—21.—*M^r Calmont v. Rankin*—Stand over to Hilary Term.

—22.—*Cumming v. Rumney Railway Company*—Undertaking by consent not to interfere with certain portion of plaintiff's premises.

—22.—*In re Godmanchester Grammar School*—Master's report confirmed as to scheme of education.

Queen's Bench.

Regis v. Inhabitants of Wolverhampton.
November 17, 1849.

LUNATIC PAUPER.—MAINTENANCE.—JURISDICTION OF JUSTICES.

Held, that the jurisdiction of justices under the 8 & 9 Vict. c. 126, s. 58, to adjudicate on the costs of maintenance, &c., of a lunatic pauper "confined or ordered to be confined" in an asylum, only lasts for the period for which the lunatic is therein confined.

A CERTIORARI had been granted to bring up an order of Sessions confirming an order of two justices made under the 8 & 9 Vict. c. 126, s. 58, upon the guardians of the parish of Wolverhampton for the payment of the costs incurred by the Manchester Union in the examination and adjudication of the pauper lunatic's settlement and of his maintenance in the asylum for the county of Lancaster, and of sending him there. The lunatic having recovered was discharged from the asylum, and the above order for payment of expenses was made 12 months after the order for sending him to the asylum and after his discharge therefrom.

Pashley showed cause against the rule, which was supported by *Huddleston*.

The Court referred to the 8 & 9 Vict. c. 126, s. 58, which enacts, "that it shall be lawful for two justices for any county or borough in which any lunatic asylum or licensed house is situate or to which such asylum shall wholly or in part belong, or from any part of

which any pauper lunatic shall have been sent, to inquire into the last legal settlement of any pauper confined or ordered to be confined therein." The word "confined" meant "in confinement," and would not apply to a lunatic who had been confined and discharged, for then the order for confinement was concluded and the question of settlement alone remained, and the power of the justices to adjudicate on the costs was at an end. The rule would therefore be made absolute to quash the orders.

Queen's Bench Practice Court.

Newton, by his next friend, v. Brighton Railway Company. Nov. 23, 1849.

SERVICE OF DEMAND FOR COSTS.—ATTACHMENT.

Semble, that the service of the demand of costs on the next friend of plaintiff in an action in which a nonsuit had been entered, is good, although it took place when the next friend (a barrister) was attending the Central Criminal Court professionally.

AN attachment had been granted against Augustus Newton, the next friend of the plaintiff in this action, for the nonpayment of the costs, pursuant to the Master's allocatur, and in which a nonsuit had been entered. The rule having been made absolute in the first instance, an application was made to stay the attachment, on the ground that it should have been only a rule nisi, and that the demand for the payment of costs had been made when he was professionally attending at the Central Criminal Court. This application having stood over for affidavits of the above facts,

A. Newton accordingly now moved to set aside the attachment on affidavits by himself, one of his sons alleging these circumstances.

The Court said, that the next friend of an infant was liable to the costs. The service of the demand thereof was the act of the party, which might be performed at his pleasure and not the process of the court. There had been a sufficient interval between the demand and the motion for an attachment, to have complied therewith, and the attachment must therefore issue and this application be refused.

Common Pleas.

Daw v. Cloud and another. Nov. 12, 13, 1849.

EMPLOYER AND SERVANT.—BROKER.—EXCESSIVE DISTRESS.

Where a servant does some act ultra the duty cast on him by his master or employer, the master is not liable; secus, where the act complained of is performed in the execution of his employer's orders.

THIS was an action for excessive distress against the defendants Cloud and Dunning, a broker. At the trial before Mr. Justice Talford, on 7th November last, a verdict was returned for the plaintiff with 20*l.* damages, and the jury found that the levy made of

34l. 2s. 3d. was too much by 18l. The arrears of rent due after the distress and sale were directed to be deducted from the 18l., and leave was reserved to move to set aside the verdict and for a new trial on the ground that the question of the charge for the levy being reasonable or not should not have been left to the jury, as there was no evidence adduced of its being excessive. The plaintiff was tenant to the defendant Cloud of a house in King Street, Hammersmith, at a rent of 50l. a year, and a quarter's rent was paid at Michaelmas, 1847. Three quarter's rent having become in arrear, the defendant, in September, 1848, put in an execution for 37l. 10s., and goods, consisting of furniture and stationery which the plaintiff's witnesses alleged to be worth 250l. were sold by auction for 68l. 6s. A sum of 34l. 2s. 3d. was deducted from this sum for the expenses of the levy.

Dowdeswell now moved, pursuant to leave, and contended, that there was no evidence to render Cloud liable for Dunning's acts: *M'Manus v. Crickett*, 1 East, 106.

The Court said, that all Dunning had done was in connexion with the distress, and in execution of Cloud's orders. In cases where a servant had done something *à l'aveugle* and *ultra* the duty imposed on them by the master, the latter would not be liable, but in the present case it was otherwise. The rule would therefore be refused.

Court of Exchequer.

Wakley v. Cooke and another. Nov. 13, 1849.

LIBEL.—EXCESSIVE DAMAGES.—JUSTIFICATION.—EVIDENCE.—CORONERS.

The Court will not disturb the verdict of a jury, on the ground of excessive damages, unless it clearly appears that gross injustice had been done.

In support of a justification to a libel, that the plaintiff was "a libellous journalist," the record of a judgment obtained against the plaintiff for libel, with 100l. damages was produced: Held, insufficient, the libel being general.

Semble, the practice of coroners of excluding persons against whom charges might be made, is contrary to law, and should be discontinued.

This was a rule nisi to set aside the verdict for the plaintiff and for a new trial on the ground of excessive damages and misdirection. The action was brought to recover compensation for libellous articles in the Medical Times upon the conduct of the plaintiff, as coroner of Middlesex, in the inquest on private White at Hounslow, charging the plaintiff with employing his friends thereon and participating in the fees, with tampering with the witnesses and reporters, and refusing to permit the officers or men of the regiment to be examined,—for the purpose of gaining popular applause. The defendants pleaded not guilty and a justification. The trial took place at the Sittings after

last Hilary Term, before Pollock, L. C. B., who directed the jury that the coroners of England had been in the habit of refusing to examine on oath parties who might be implicated in the subject under inquiry, and also left it to the jury to say whether, in connexion with Mr. Bransby Cooper's evidence, the production of the judgment roll of a verdict against the plaintiff for Mr. Cooper, with 100l. damages, for a libellous article in the Lancet, established the justification of the alleged libel, calling the plaintiff "a libellous journalist." The jury found for the plaintiff with 350l. damages.

The Attorney-General, E. James, and Bramwell, showed cause against the rule, which was supported by Wilkins, S. L., and Dearsley.

The Court said, that unless gross injustice had been done, this Court would not disturb the verdict of a jury in whose province it was to award the amount of damages. The direction as to the practice of coroners was not on a point of law, but a mere statement of what appeared to be the uniform practice as to Middlesex. The practice, however, of so excluding persons against whom charges might be made should be discontinued. The record produced merely showed that judgment had been once recovered against the plaintiff, and did not justify the words "a libellous journalist," which must be understood to mean that he was habitually so. The rule would therefore be discharged.

Dec. 22.—*Levy v. Abbott*—Rule discharged with costs to quash return to *sci. fa.*

—22.—*Morrall v. Fisher*—Certificate to Vice-Chancellor Knight Bruce that residuary legatee entitled to certain closes.

—22.—*In re Estreated Recognizances of Thornton*—Stand over to Hilary Term.

Court of Exchequer Chamber.

Regina v. Harris. Nov. 7, 1849.

BANKRUPT.—CONCEALMENT OF PROPERTY.—INDICTMENT.—IRREGULARITY.

An indictment against a bankrupt for fraudulently concealing certain property, should allege there had been an examination; and where the only allegation was, that the bankrupt had surrendered, and was then and there duly sworn, the indictment was held defective, and judgment arrested.

The prisoner, a bankrupt, had been convicted at the last Gloucester Spring Assizes, before Mr. Baron Platt, for having fraudulently concealed certain real property, of which he had disposed.

Huddleston now moved on leave reserved in arrest of judgment. The indictment was defective for not setting forth there had been an actual examination, and the allegation of his having surrendered and being then and there duly sworn was insufficient. It was also defective for alleging that the bankrupt was possessed of an estate, and immediately after that

he had disposed of it: 2 *Hawkin's Pleas of the Crown*, ch. 25, s. 62.

Cooke in support of the conviction.
The Court, without going into the question of repugnancy of the allegations, said that the indictment was defective on the first objection, and discharged the prisoner.

Court of Bankruptcy.

(Coram Mr. Commissioner Holroyd.)

Anon. Nov. 23, 1849.

PETITIONING CREDITOR.—SOLICITOR.—ATTESTATION CLAUSE.

Semble, that an attorney cannot act in the double capacity of petitioning creditor and solicitor to the petition.

Semble also, that the attestation to a petition under the 12 & 13 Vict. c. 106, Schedule (M.), must not be omitted, although the petitioning creditor may be a solicitor.

A PETITION for adjudication by a solicitor was unattested, the solicitor being the petitioning creditor.

Foulkes, in support, contended, that the attestation was unnecessary where the petitioning

creditor was a solicitor, and that it was not an essential part of the form in 12 & 13 Vict. c. 106, (Sched. M.)

The Commissioner said, that the rule with regard to fiats, that a solicitor could not act both as solicitor and assignee, applied to petitions, and against his acting as petitioning creditor and solicitor. As to the attestation, although it was not a part of the petition any more than of a deed, yet as the act had prescribed a certain form, it ought to be adhered to. Notwithstanding another petition had been presented from a different party since the filing of a second petition with the usual attestation clause, the adjudication will be granted to the original petition.

(Coram Mr. Commissioner Goulburn.)

Anon. Nov. 24, 1849.

A SIMILAR petition having been presented by a solicitor without the usual attestation clause,

The Commissioner concurred in the opinion of Mr. Commissioner Holroyd, citing *Esparte Steele*, 16 Ves. 161; and *Esparte Badcock*, Mont. & M'A. 243.

ANALYTICAL DIGEST OF CASES—

REPORTED IN ALL THE COURTS.

Courts of Common Law.

[For the previous sections of this series of the Digest, in the present volume, see Jurisdiction of County Courts, p. 87. Poor Law and Magistrates' Cases, 108. Construction of Statutes, 128, 146.]

PRINCIPLES AND JURISDICTION.

ASHES.

Meaning of term, in *Paving Act*.—A brass-founder, having extracted a quantity of metal from ashes which fell into the ash-pit during the process of casting, was accustomed to give the refuse, in which some metal still remained, as a perquisite to his apprentices, by whom it was sold to brass-refiners, who extracted from the ashes a further quantity of metal: *Held*, that the ashes, being available for a commercial purpose, were not "dust, cinders, or ashes," within the meaning of the Metropolitan Paving Act, 57 Geo. 3, c. xxix. *Law v. Dodd*, 1 Exch. R. 845.

ATTACHMENT IN LORD MAYOR'S COURT.

In an action by A. against B., execution executed upon a foreign attachment in the Lord Mayor's Court of London, is a good plea in bar of the further maintenance of an action in this Court against C., the garnishee in respect of the same debt. *Webb v. Hurrell*, 4 C. B. 287.

AUCTIONEER.

Personal liability.—*Evidence of contract*.—*Transfer of shares*.—*Tender*.—A. bought at auction three lots of 100 railway shares each,

one of the conditions of sale being "the balance of the purchase money shall be paid at the office of the auctioneers on the day following the sale, except in cases where any special transfers are required, and to such, the utmost expedition will be given." After the sale, A. received the 300 shares, together with a bill of parcels, describing the transaction as a sale of "300 shares," and paid the price. The name of the owner of the shares was not disclosed at the time of the sale, but upon A. applying for a transfer,—the constitution of the company requiring a transfer by deed,—the auctioneers informed him that they were only agents in the transaction, and referred him to B., as their principal, and as the party who, alone, could procure the transfer to be executed.

In an action against the auctioneers for not transferring: *Held*, 1st, that inasmuch as they had not disclosed their principal at the time of the sale, they were personally liable,—2ndly, that the bill of parcels was evidence of an entire contract for the sale of 300 shares,—3rdly, that, by referring A. to B., the defendants discharged A. from tendering a transfer for to them. *Franklyn v. Lamond*, 4 C. B. 637.

BILL OF EXCHANGE.

Want of consideration.—In an action by drawer against acceptor of a bill of exchange, a plea that defendant accepted merely for plaintiff's accommodation, and that plaintiff did not, at any time, give any value or consideration for the acceptance, fails, if it appear that, after the bill was accepted (as alleged) for accommoda-

tion, the plaintiff gave a cross acceptance, and was obliged to pay the amount, and that the bill accepted by defendant was due and unpaid at the time of action brought. *Burdon v. Benton*, 9 Q. B. 843.

Cases cited in the judgment: *Rolfe v. Caslon*, 2 H. Bl. 570; *Crowley v. Dunlop*, 7 T. R. 565; *Bosanquet v. Dudman*, 1 Stark. N. P. C. 1; *Ballard v. Bygrave, Ry. & M.* 271; *Atwood v. Crowdie*, 1 Stark. N. P. C. 483.

BILL OF LADING.

Where a bill of lading stipulates on the face of it for payment of demurrage, the indorsee, taking goods under it, is liable for demurrage. *Stindi v. Roberts*, 5 D. & L. 460.

BOTTOMRY.

Shipper of goods.—Indemnity.—The master of a ship damaged by perils of the sea, hypothecated at a foreign port, by one bottomry bond, for necessary repairs, the ship, freight, and cargo, amongst which were the plaintiff's goods. The ship and freight realized less than the sum borrowed, and the plaintiff was obliged to contribute towards the difference, and also to pay his proportion of the costs of a suit instituted in the Court of Admiralty by the obligee of the bond: *Held*, that the plaintiff might maintain an action against the owner of the ship on an implied promise to indemnify; also, that a plea stating that the bond was executed by the master without express authority from the defendant, and that when the same was executed, the costs of repairs exceeded the value of the ship and freight, and as soon as the defendant had notice, he abandoned the ship and freight, and never did ratify the act of the master, was bad on general demurrer. *Duncon v. Benson*, 1 Exch. R. 537.

Cases cited in the judgment: *The Vibilia*, Wm. Rob. 10; *The Gratitude*, 3 Rob. 261; *Richardson v. Nourse*, 3 B. & Ald. 237.

CHARTER PARTY.

Delay in loading.—Misconduct of master and crew.—By charter party, the freighters of a ship agreed with the owners that the ship, being fit for the voyage, should proceed to Port T., and there load a cargo; the ship to be loaded in turn; certain working days to be allowed, and a further number of days for demurrage, &c. The owners brought assumpsit on this agreement, alleging: 1. That, although the ship being fit, &c., sailed, and arrived at Port T., yet defendants did not, within a reasonable time after her arrival there, load a cargo, &c.; 2. That defendants did not, at port T., load the ship in turn, but long after the proper and regular turn; whereby plaintiff was injured, &c.

Pleas, 1. That defendants did, within a reasonable time after the arrival, &c., load the ship, &c. 2. That defendants did, at Port T., load the ship in turn. 3. That plaintiff was master, and had the care, direction, and management of the ship; and that, after the ship's arrival at Port T. and before defendants could load, &c., plaintiff so being master, &c., and the crew,

took such bad care of the ship, and governed and navigated her so improperly, that the ship, by the carelessness, unskillfulness, and mismanagement of the said master and crew, became damaged and unfit to receive a cargo, and so remained for a long time, &c., by reason whereof defendants could not load, &c. Replication, *de injuria*. Issues joined on all the pleas.

By a local act, regulating the port, the master of every ship coming in was bound, under a penalty, to moor, anchor, and place the same in such situation as the harbour-master should direct; and the harbour-master was authorized to cause the vessel to be removed in such manner as he should deem necessary. The ship's master was also bound to take on board a pilot, who, by the bye-laws of the port, was to obey the orders of the harbour-master. It was proved, on the trial, that defendant's ship, with a pilot, arrived at the port, and received directions from the harbour-master as to entering; but the master and crew worked the ship in a manner contrary to his directions; and in consequence she received injury, lost her turn of loading, and was unable to load till the expiration of some days, when she loaded without further delay. After verdict for defendants on all the issues:

Held, on motion for new trial, that on the 3rd issue, the judge rightly directed the jury to find for plaintiffs, if they thought the accident was the fault of the master and crew, for: 1. The ship, though under the harbour-master's direction, was, for the purposes of this plea, under the care and management of the plaintiff. 2. The defendants might allege the delay, occasioned as above, in order to show that they loaded in reasonable time, and in turn, within the meaning of the charter party.

Held also, on motion to enter a verdict for plaintiff, on the 1st and 2nd issues, that on the facts above stated, defendants were right in pleading that they loaded in turn, and in reasonable time; and that they could not have pleaded in confession and accordance. *Taylor v. Clay*, 9 Q. B. 713.

COMMISSION.

Agreement for exchange of advowson.—Abstract of conveyance.—Upon a negotiation between A. and B. for an exchange of advowsons, A. agrees to pay to the agent C., 100l., "one-third down, the remaining two-thirds when the abstract of conveyance is drawn out." The one-third is paid, A. delivers an abstract of his title, but no abstract is delivered on the part of B., and the negotiation drops: C. cannot maintain an action against A. for the remaining two-thirds of his commission,—the events, on the happening of which his right to it was to arise, not having occurred. *Alder v. Boyle*, 4 C. B. 635.

COMMISSION AGENT.

1. Construction of word "proceeds."—The declaration stated, that, in consideration that plaintiffs at London would consign to defend-

Sic in marginal note, but should be defendants.

ants at China, certain goods for sale and receipt of the proceeds there by defendants, on account of the plaintiffs, for reward in that behalf, defendants promised to invest and remit the said proceeds to plaintiffs at London, within a reasonable time after receiving the said proceeds, by purchasing, to the amount of 500*l.*, any other article than tea and silk, if defendants thought fit; and that, if tea could not be bought by defendants, and silk could, within certain prices agreed upon, and if defendants did not purchase any other article than tea and silk, then that defendants would purchase silk to the extent of half the said proceeds, that defendants afterwards received the goods and sold them, and received the proceeds thereof; and, while they held them for more than a reasonable time, that defendants did not invest any part of the proceeds in any other article than tea or silk; and that while they could have bought silk and could not have bought tea, within the prices agreed upon, defendants did not invest the said one-half part of the said proceeds in silk, within the prices agreed upon, for more than a reasonable time after the receipt of the said proceeds, &c. Plea, that, after defendants received the proceeds of the goods consigned, they could not have bought silk at the prices specified, modo et forma; concluding to the country; upon which plea issue was joined: *Held*, that, upon the true construction of the term "*proceeds*" in the issue raised by this plea, the question was not whether defendants could have bought silk at China, at the prices agreed upon, after the whole proceeds had been received by them, but whether they could not have bought silk at China, at those prices, after they had received a part or parts of the proceeds, for the remittance of which more than a reasonable time had elapsed from the period when they first began to receive such part of the proceeds as was considerable enough to be remitted. *Entwisle v. Dent*, 1 Exch. R. 812.

2. *Construction of term, "You may invest."*—The plaintiffs, merchants in England, consigned to the defendants, commission agents in China, certain goods to be disposed of under the terms of a letter containing the following passage. "If tea is not obtainable at our limits, you may invest the half of the whole proceeds in silk, at prices, &c. If silk is obtainable much below those prices, you may substitute it in part for tea, even if the latter is to be had within our limits, at your discretion." *Held*, that upon the true construction of the above passage, as read with the whole of the letter, the words "*you may invest*" were directory, and did not leave the matter to the discretion of the agents. *Entwisle v. Dent*, 1 Exch. R. 812.

COVENANT.

Condition precedent.—Declaration in covenant stated, that plaintiff, by indenture, granted to defendant all the coals, and mines of coal, under certain land; that defendant covenanted to pay the plaintiff, as the price of the coal so granted, 40*l.* for every statute acre of the said coal

which should be found under the said lands, and, until the said price should be fully paid, to pay plaintiff 40*l.*, part of the said price, in each year, by two equal half-yearly instalments, whether the whole of an acre of coal should be gotten in every such year, or not. Averment, that at the time of the making of the indenture, there were under the said lands divers, to wit, 14 acres of coal; and that divers, to wit, 13 acres of the said coal still remained under the said lands; and that 40*l.* for two of the half-yearly instalments of the said price for the coal aforesaid became due, and was still in arrear and unpaid to the plaintiff: *Held*, on error in the Exchequer Chamber, reversing the judgment of the Court of Exchequer, that the finding of coal was not a condition precedent to the plaintiff's recovering the annual sum of 40*l.* *Jowett v. Spencer*, 1 Exch. R. 647.

DEVISE.

1. *Construction of proviso.*—P. J., by his will, dated in 1779, left large real estates to his wife for life; and after her death, to his daughter D., wife of Sir J. E., for her life, and after her death, to her eldest son R. E., for his life; and, after his death, to the first and other sons of R. E., severally and successively, and the heirs of their respective bodies; and for default of such issue, to the testator's grandson, M. J. E., the second son of his daughter, in case he should not become seised of certain estates (devised by M. D.); and after the death of M. J. E., the testator devised the said estates, upon the conditions aforesaid, to the first and other sons of M. J. E., severally and successively, to their heirs respectively and successively; and, in default of such issue, he devised his estates, on the like conditions as aforesaid, to the third and every other son of his daughter, severally and successively, and their heirs. And the testator declared, that if the said M. J. E., or any son of his daughter, should, at any time during his life, become seised of the real estates (devised by M. D.), then M. J. E., or such son of his daughter so becoming entitled, or any heir of his body, should not take any interest in the testator's estates, but they should go over to the next son of his daughter and his heirs, with a clause for reverting the estates in the son so displaced, on certain contingencies.

Provided "always, that if it shall happen that my said daughter shall have no issue male of her body living at her death, or no such issue male as shall be entitled by the true meaning of this my will to my real estates, hereby limited and settled as aforesaid, then and in either of those cases, I devise all my said real estates, subject respectively as aforesaid, to all the daughters, if more than one, of the body of my said daughter, who shall be living at her death, as tenants in common, and their heirs respectively, with cross remainders amongst them, in case of any one or more happening to die under the age of 21 years, and without issue; and if there should be but one such daughter living at my said daughter's de-

cease, and no issue of any other such daughter then in being, then to such only surviving daughter and her heirs. Provided always, that if any such daughter or daughters of my said daughter shall happen to die in her or their said mother's lifetime, leaving issue, then my will is, that such issue of each such daughter so dying, and the heirs of such issue respectively, shall have and take the estate, or share or shares of estates, as the parent or parents of such issue respectively would have been entitled to if she or they had been living at the decease of my said daughter."

The proviso then concluded by devising the estates to those persons to whom the daughter might please to leave them by will, in case she should leave no issue at her death; and in case she should not make any will, the estates to the testator's heirs. The daughter, *D.*, died in 1792, in the testator's lifetime, leaving two sons, *R. E.* and *M. J. E.*, and several daughters. The testator died in 1796, when his widow became possessed of the estates, and died in 1810. At her death, *R. E.* became possessed of the estates until his death, which occurred in 1844; *M. J. E.* died in 1841; both died without issue: *Held*, that the words "*living at her death*," in the preceding proviso, were to be read as connected with the verb "*shall have*," and referred to both members of the sentence in the commencement of the proviso; and consequently, as the testator's daughter, at the time of her death, had issue male entitled to the testator's estates, the daughters of the testator's daughter took no estate or interest under the will. *Wilson v. Eden*, 1 Exch. R. 772.

2. "*Survivor or survivors*," how to be construed.—A testator devised three several estates to his three daughters, *M.*, *C.*, and *L.*, for their respective lives, with remainder to their children, as tenants in common in fee, provided that if any or either of them should die without issue, the property given to such daughter should go and accrue to the "*survivors or survivor*," in equal shares, as tenants in common, and if all except one should die without issue, then the shares of such daughters so dying should go to the "*survivor*," her heirs and assigns, for ever. On the 3rd October, 1841, *C.* died, leaving a son. On the 25th October, 1841, *L.* died without having had issue. On the 22nd December, 1841, *M.* and her husband conveyed to a trustee, as well the property devised to her for life as that devised to *L.*, to hold to the use of *M.*, for the joint lives of herself and her husband, with remainder to the survivor in fee: *Held*, that the word "*survivor*" in the will must be construed according to its ordinary meaning; and that on the death of *L.*, the property given to her for life vested absolutely in *M.* in fee; also, that the son of *C.* could, under no contingency, become entitled to any interest in the property given to *M.* for life. Also, that under the will and deed, the husband of *M.*, in her right, had an estate in possession during the joint lives of himself and his wife. *Lee v. Stone*, 1 Exch. R. 374.

3. "*Lands*" misdescribed.—Devise of "all that my messuage or dwelling-house, and buildings, garden, *lands*, and appurtenances, in which I now live, at Higher Tranmere; also, the croft, close, or inclosure of ground situate at Tranmere aforesaid, which I have lately purchased, with the two cottages erected thereon." At the time of his will, the testator occupied a dwelling-house, outbuildings, stable, and garden at Tranmere. He had occupied also four closes of land, in all 11 acres, which he had bought at the same time with the dwelling-house, outbuildings, stable, and garden; but a year before the date of his will he had given up the occupation of those closes. He did not occupy any other lands in Tranmere, besides what would be comprised within the terms "*dwelling-house, outbuildings and garden*:" *Held*, that the four closes of land passed by this devise. *Nightingall v. Smith*, 1 Exch. R. 879.

See *Legacy Duty*.

FOREIGN STOCK.

Meaning of words "*bought*" and "*sold*."—In an action for not delivering foreign stock, the declaration alleged that the plaintiff "*bargained with the defendant to buy, and then bought from him, and the defendant then agreed to sell, and then sold to the plaintiff, certain foreign stock, to wit, 28,000 Spanish Active Stock*," &c.: *Held*, that the words "*bought*" and "*sold*" must be construed with reference to the subject-matter of the contract, and as meaning an agreement to buy and sell; and that a contract for the sale of stock, Exchequer Bills, and securities of that description, in which the property passes by delivery, differs from a contract for the sale of a specific chattel, inasmuch as a contract for the sale of stock, Exchequer Bills, &c., would be satisfied by the delivery of any stock or bills of the description bargained for, and consequently the contract for sale cannot mean an actual sale, but only a contract to deliver. *Heseltine v. Siggers*, 1 Exch. R. 856.

GUARDIAN AND WARD.

1. *A.* was left a widow in India with two children, *B.*, the mother of her deceased husband, offered to take charge of the children if they were sent home to her to England. One of them accordingly was sent home to the grandmother, and resided with her till the time of her death in 1843. She left her property to trustees in trust for the children. Since her death, the child had been put to school by the trustees, and was under their charge and control; with whose arrangements the mother had at various times expressed her satisfaction, and her sense of the kindness shown to the child. In the early part of 1847, the mother, who had married again, and her second husband, executed a joint and several letter of attorney to *C.*, to demand and receive the custody of the child on her behalf. *C.*, after demand and refusal, brought a writ of *habeas corpus*. The Court, refused under the above circumstances, after the acquiescence by the mother in the custody of the trustees, and no cause of com-

plaint being assigned for the change, to remove the child from their custody; or to examine the child with a view of ascertaining whether a capable of exercising a sound discretion, and if so, of declaring him at liberty to go with whomever he wished. *In re Preston*, 5 D. & L. 233.

2. *Quere*, whether a parent residing abroad can appoint an attorney to claim and receive, under a writ of *habeas corpus*, the custody of an infant child?

And *quere*, if a widow, having married again, can execute such a letter of attorney. *In re Preston*, 5 D. & L. 233.

Cases cited in the judgment: *Lyons v. Blenkins*, Jac. 245; *Ex parte Hopkins*, 3 P. Wms. 152.

INSURANCE.

- *Total loss*.—A policy contained a clause, that the ship was to be "allowed to be seaworthy for the voyage." In the course of the voyage, she met with a violent storm, by which she was much damaged, and obliged to put into the Mauritius. On examination there, it was found that the ship would require very extensive repairs to make her seaworthy, and that the cost of such repairs would exceed her value when repaired; that many of the beams were broken, and many of the bolts and fastenings loosened; and that, the vessel being old, and in many parts decayed, the decayed parts could not be again made use of, as they would not bear re-bolting, but would require to be replaced with new timbers.

In an action upon the policy, averring a total loss by a peril insured against, the judge left it to the jury to say, whether the costs of the repair of the damage arising from the perils insured against would have been greater than the value of the ship when repaired; telling them, that if they were of that opinion, they should find for the plaintiff, which they did: *Held*, that this was a correct direction, and the verdict warranted by the evidence; for that the judge was not bound to tell the jury, that, in considering the repairs that were necessary, they must exclude from their estimate all such repairs as were rendered necessary by the decayed state of the ship. *Phillips v. Nairne*, 4 C. B. 343.

LANDLORD AND TENANT.

1. *Retention of goods distrained*.—A landlord who has accepted the rent in arrear, and the expenses of the distress, after the impounding, cannot be treated as a trespasser merely because he retains possession of the goods distrained, although his refusal to deliver them up to the tenant may amount to a conversion, so as to render him liable to *trover*. *West v. Woods*, 4 C. B. 172.

Cases cited in the judgment: *The Six Carpenters' case*, 8 Co. Rep. 146; *Evans v. Elliott*, 6 M. & M. 606; *Vertue v. Bensley*, 1 M. & Rob. 81.

2. *What distrainable*.—*Livery stables*.—Horses and carriages standing at livery are not exempted from distress for rent. *Parsons v.*

Gingell, 4 C. B. 545; *Lewis v. Gingell*, Ib. 561, n.

Cases cited in the judgment: *Francis v. Wyatt*, 3 Burr. 1498; 1 W. Bl. 483; *Matthias v. Meenard*, 2 C. & P. 353.

See *Nuisance*.

LEASE.

Damages for breach of agreement to grant lease.—Where a party agrees to grant a good and valid lease, having full knowledge that he has no title, the plaintiff, in an action for the breach of such agreement, may recover, beyond his expenses, damages resulting from the loss of his bargain; and the defendant cannot, under a plea of payment of money into Court, give evidence that the plaintiff was aware of the defect of title. *Robinson v. Harman*, 1 Exch. R. 850.

Case cited in the judgment: *Hopkins v. Grassebrook*, 6 B. & C. 31.

LEGACY DUTY.

Devise of real estate.—*Power of sale*.—Where real estate was devised to trustees, in trust to convey the same unto and among certain persons mentioned in the will, in equal proportions, in severalty; and for the purpose of such division and partition, the trustees were empowered from time to time to sell all or any part of the devised estates, and were to stand possessed of the money to arise from such sales, in trust for the same persons, share and share alike; and the trustees accordingly, for the purposes of the trust, sold the whole of the devised estates: *Held*, that this was "real estate directed to be sold," within the meaning of the Stamp Act, (55 Geo. 3, c. 184, Sched., pt. 3, tit. "legacies,") and that legacy duty was payable upon the proceeds of such sale. *Attorney-General v. Simcox*, 1 Exch. R. 749.

Cases cited in the judgment: *In re Evans*, 2 C. M. & R. 206; *Attorney-General v. Mangles*, 5 M. & W. 120.

LIBEL.

Colloquium.—"Warning J. C. & Co., share-brokers, (meaning the plaintiffs,) are informed that the 200 Manchester and Southampton railway shares bought by J. C., under a false representation of the market, at 81. per share, or 1,625*l.*, and sanctioned by C. J., (meaning the defendant,) and paid for at the time of purchase, that he forthwith sends them to the Manchester and Southampton Committee, with instructions to return the deposit balance to him, (meaning the defendant,) unless C. and Co. (meaning the plaintiffs) claim it, or elect to proceed; and unless C. and Co., (meaning the plaintiffs,) within the present year, arrange to return the 1,625*l.* to him, (meaning the defendant,) also the 7*l.* expenses incurred for advertisement and solicitor to procure proof of having paid C. and Co. (meaning the plaintiffs) 1,600*l.* and 25*l.* commission, C. J. (meaning the plaintiff,) will adopt legal measures. The amount will be taken by instalments, on security being deposited with any bankers but those who recommended C. and Co.," *Held*, in the absence of a colloquium pointing to the above,

or an averment of special damage, the publication was not actionable. *Capel v. Jones*, 4 C. B. 259.

Cases cited in the judgment: *Hearne v. Stowell*, 12 A. & E. 719; *Goldstein v. Foss*, 6 B. & C. 154; 9 D. & R. 197; 4 Bing. 489; 1 M. & P. 402; 2 Y. & J. 146.

MINING ADVENTURERS.

Liability of partners.—One of several co-adventurers in a mine, has not, as such, any authority to pledge the credit of the general body, for money borrowed for the purposes of the concern. And the fact of his having the general management of the mine makes no difference, in the absence of circumstances from which an implied authority for that purpose can be inferred. *Ricketts v. Bennett*, 4 C. B. 686.

Cases cited in the judgment: *Dickinson v. Valpy*, 10 B. & C. 128; 5 M. & R. 126; *Tredwen v. Bourne*, 6 M. & W. 461; *Hawtayne v. Bourne*, 7 M. & W. 595; *Hawken v. Bourne*, 8 W. & W. 703.

MORTGAGE.

Mortgagor and Mortgagee.—Under the 7 G. 2, c. 20, which provides, that "where any action shall be brought on any bond for payment of the money secured by such mortgage," &c., the Court may, on payment of the principal monies, interest, and costs, &c., compel the mortgagee to reconvey and deliver up deeds, &c.: *Held*, that where an action was brought on the covenant for payment in the mortgage deed, the case was within the act, and an order might be made for the delivery up of deeds, &c.: *Held* also, that the order might be made by a judge at chambers. *Smeeton v. Collier*, 5 D. & L. 184.

Case cited in the judgment: *Dixon v. Wigram*, 2 C. & J. 613.

NUISANCE.

Responsibility of owner.—Landlord and tenant.—Although the owner of property may, as occupier, be responsible for injuries arising from acts done upon that property by persons who are there by his permission, though not strictly his agents or servants,—such liability attaches only upon parties in actual possession.

Where, therefore, an action was brought against A., the owner of premises for a nuisance arising from smoke issuing out of a chimney, to the prejudice of the plaintiff in his occupation of an adjoining messuage,—on the ground that A., having erected the chimney, and let the premises with the chimney so erected, had impliedly authorized the lighting of a fire therein: *Held*, that the action would not lie.

Held, also, that inasmuch as the premises were in the occupation of B., a tenant at the time the fire was lighted, A. was entitled to a verdict on a plea of "not possessed," the allegation as to possession, having reference to the time when the nuisance complained of was committed, and not to the time at which the chimney was erected. *Rich v. Baiterfeld*, 4 C. B. 783.

Cases cited in the judgment: *Bush v. Steisman*, 1 B. & P. 404; *Burgess v. Gray*, 1 C. B. 578; *Randleston v. Murray*, 8 A. & E. 109; *Laugher v. Pointer*, 5 B. & C. 547; 8 D. & R. 556; *Quarman v. Burnett*, 6 M. & W. 499.

PARTNERSHIP.

Liquidated damage.—By a deed for the dissolution of partnership between the plaintiff and defendant, it was covenanted by the defendant that he would not at any time or times thereafter, within the next seven years, directly or indirectly, either by himself or in co-partnership with another or others, carry on the business of an attorney or solicitor within the distance of 50 miles from a place named, nor interfere with, solicit, or influence the clients of the late co-partnership; and that if he should in any respect infringe that covenant, then he should immediately thereupon pay the plaintiff the sum of 1,000*l.* as and for liquidated damages, and not by way of penalty: *Held*, that the sum of 1,000*l.* was, upon the construction of this covenant, to be considered by way of unliquidated damages, and not as a penalty. *Galsworthy v. Strutt*, 1 Exch. R. 659.

Cases cited in the judgment: *Lowe v. Pears*, 4 Barr. 2225; *Kemble v. Farren*, 6 Bing. 141; 3 M. & P. 425; *Horner v. Flintoff*, 9 M. & W. 678; *Beckham v. Drake*, 8 M. & W. 846; *Green v. Price*, 13 M. & W. 695; *Rawlinson v. Clarke*, 14 M. & W. 187.

See *Mining Adventurers*.

PATENT.

1. *Sci. fa. to repeal.*—*Venire awarded by Court of Chancery.*—On *sci. fa.* brought in the Petty Bag Office in Chancery, to repeal letters patent for an invention, if issues of fact are joined there, and the record sent to the Queen's Bench for trial, which is bad, and a verdict found for the Crown, the Queen's Bench, though the letters patent remain in Chancery, may give judgment that they be revoked, cancelled, vacated, disallowed, annulled, void and invalid, and be altogether bad and held for nothing, and also that the enrolment thereof be cancelled, quashed, and annulled, and that they be restored to the Court of Chancery, there to be cancelled.

Semble, that for execution of the judgment that the enrolment be cancelled, it would be sufficient to send a transcript of the record to the Court of Chancery by *certiorari* and *mittimus*, that Court having only a ministerial duty to perform in cancelling the patent after the judgment in B. R. *Bynner v. Keginam*, 9 Q. B. 52.

2. *Sci. fa. to repeal.*—*Trial of issue.*—A *sci. fa.* to repeal letters patent was issued out of Chancery, returnable there; appearance entered, declaration filed, plea pleaded, and issue joined, in the Petty Bag Office. The case was then sent to the Court of Queen's Bench for trial; and the ruling here was, that the Chancellor, with his own hand, delivered "a record" on motion (by a party bringing error) to amend by substituting the words "transcript of a record." *Held*, that the entry did not re-

quire amendment. *Regina v. Bynner*, 9 Q. B. 529, n.

Case cited in the judgment: *Jefferson v. Morton*, 2 Sand. 23.

3. *Particulars of infringement.*—In an action for infringing a patent, the Court has a general power to order a particular of the alleged infringements.

But, where the specification claimed a combination of numerous improvements, (in electric telegraphs,) the Court refused to compel the plaintiffs to give the defendants such particulars,—conceiving, that from the nature of the patent, the plaintiffs would be thereby put to great difficulty and embarrassment, and that, under the circumstances, (the matter having been defeated in Chancery upon a motion for an injunction,) the defendants must be taken to possess adequate information on the subject. *Electric Telegraph Company v. Nott*, 4 C. B. 462.

4. *Infringement.*—In case for infringement of a patent, the defendant pleaded not guilty,—that the plaintiff was not the true and first inventor, and that the invention had been previously, wholly or in part, publicly or generally known, used, practised, and published in England: *Held*, that the issue on the first plea must be determined by the acts done by the defendant, without reference to the existence or the non-existence of a fraudulent intention;—that the second plea would be proved by the showing a publication before the date of the letters patent; and that the 3rd plea only raised a question of user before the grant of the letters patent. *Stead v. Anderson*, 4 C. B. 806.

PAVING ACT.

See *Ashes*.

PRIVILEGED COMMUNICATION.

See *Stander*.

SALE.

1. *Delivery and acceptance of goods.*—A, a merchant at Birmingham, bought goods of B. and Co., commission agents at Manchester and Leeds. On the 20th of March, 1844, the goods were, by A.'s direction, sent to L. and Co., shipping agents at Liverpool, empowered by A. to receive and forward them to Valparaiso; and, on the same day, B. and Co. wrote to L. and Co., advising them of the transmission of patterns, which they requested them to ship with the goods, "as A. might direct the same to be shipped." The goods were, on the 4th of April, shipped by L. and Co. on board a vessel bound for Valparaiso, and were afterwards reloaded by order of a member of the house at Valparaiso, to whom they were consigned by A.; and sent to B. and Co.'s house at Manchester, for the purpose of being repacked in smaller cases. The price of the goods became payable on the 26th of April, but was not paid, A. having in the meantime become insolvent: *Held*, that the property and possession of the goods had vested absolutely in A., the vendee, before they were re-delivered to B. and Co. at Manchester, and that, by such

re-delivery, the latter acquired no new rights as unpaid vendors.

Semble, that the *transitus* was at an end when the goods reached the hands of L. and Co.; but that, at all events, the right of B. and Co. to intercept the goods was gone, when A. had exercised an act of ownership over them, by reloading them and sending them to be repacked. *Valpy v. Gibson*, 4 C. B. 837.

2. *Contract binding though silent as to price.*—A contract of sale may be complete and binding, though silent as to the price, (such silence being equivalent to a stipulation for a reasonable price,) and as to the time and mode of payment. *Valpy v. Gibson*, 4 C. B. 837.

3. *Specific chattel.*—A. addressed the following proposal to B.:—"I do hereby agree to provide a 14-horse engine, and 16-horse boilers, with fittings, and everything complete, for 260*l.*, and to deliver and erect the same at the mill of B., and to set the same to work."

To this B. replied—"In consideration of your supplying us with a certain 14-horse engine, which our foreman has inspected, and putting the same in thorough repair, and supplying a new 16-horse boiler, commonly called a Cornish boiler, with fire-place, valves, steam-cocks, and gauges complete, and delivering and erecting the whole, and setting the whole at work, according to the undertaking signed by you and left with us, we agree to pay for the same 260*l.*—[Two instalments were then provided for, and the letter proceeded]—and will, on being satisfied with the work, as per your agreement, pay you the remainder within two months of its completion."

Held, that B. bargained for, and bought the specific engine, which was afterwards erected; and that, assuming there was a warranty as to its power, and that the warranty was broken, that was no answer to an action for the price, but only ground for a reduction, or the subject of a cross action.

Held, also, that the stipulation as to deferring the payment of the last instalment, until A.'s work was done to the satisfaction of B., referred to the work in erecting the engine, and not to the price of the engine itself.

A new trial was directed, on the ground that no question had been left to the jury as to whether that work was such as ought reasonably to have satisfied B. *Parson v. Sexton*, 4 C. B. 899.

Cases cited in the judgment: *Sheet v. Blay*, 2 B. & Ald. 456; *Chatter v. Hopkins*, 4 M. & W. 399; *Ollivant v. Bayley*, 5 Q. B. 288; 1 D. & Mer. 373.

See *Ship*.

SCI. FA.

See *Patent*.

SHERIFF.

Escape.—A, a prisoner in execution in the common goal for the county of Radnor,—but having a permanent lodging in London, where his wife and family resided, and to which it was his intention to return,—petitioned the Court of Bankruptcy for protection from process, under the 5 & 6 Vict. c. 116, and 7 & 8

Vict. c. 96, and a commissioner of that Court issued his warrant to bring *A.* before him for examination. The prisoner was accordingly brought up to London on Saturday, the 24th of January, and carried before the commissioner at about two o'clock on that day, when his petition was dismissed, for informality: *Held*, that *A.* had a sufficient residence within the London district to entitle him to present his petition there, and that the commissioner had such jurisdiction in the matter as to justify the sheriff in yielding obedience to his warrant.

Before five o'clock on Saturday afternoon, a writ of *habeas corpus* was lodged with the town agent of the sheriff, and a copy served upon the officer who had *A.* in custody. The writ was sent into Radnorshire that evening, and returned on the following Monday, when *A.* was taken before a judge at chambers, and committed to the Queen's Prison. It appeared that *A.*'s state of health was such that he could not, without inconvenience and risk, have been carried back to Radnorshire on the Saturday night; and that, in the interval between the dismissal of his petition and his being taken before the judge, the officer who had him in charge, allowed him to go to taverns and other places, in London and Middlesex, but always in actual custody: *Held*, that the sheriff was not guilty of an escape; for, that he was only bound to take his prisoner back to gaol within a convenient time, and to guard him with a reasonable degree of strictness during the time he was necessarily out of the limits of his county. *Nias v. Davis*, 4 C. B. 444.

Cases cited in the judgment: *Boyton's case*, 3 Co. Rep. 43; *Hawkins v. Plomer*, 2 W. Bl. 1048.

SHIP.

1. *Sale of.—Bankrupt.*—The 31st section of the 3 & 4 Wm. 4, c. 55, enacts, that the sale of a registered ship shall be by an instrument in writing, containing a recital of the certificate of registry, "otherwise such transfer shall not be valid or effectual for any purpose whatsoever, either in law or equity." The 34th sec. provides that no instrument shall be valid to pass the property in a ship, or for any other purpose, until such bill of sale shall have been registered by the proper officer. And by s. 35, it is enacted, that, when and so soon as the instrument shall have been registered, as against all and every persons whatsoever, and to all intents and purposes, except as against such subsequent purchasers and mortgagees who shall first procure an indorsement on the certificate of registry, in the manner thereafter mentioned.

A British ship registered under this act was conveyed by *A.*, the registered owner, to *B.*, for a valuable consideration, by a bill of sale executed before, but not registered until after, the bankruptcy of *A.*: *Held*, that *B.* thereby acquired no property in the ship, but that it passed to *A.*'s assignees,—the effect of the statute being, that, until registration, every disposition by the act of the vendor, or of the law, is as effectual as if the unregistered deed had not existed, and is not defeated by subsequent

registration, whether such intermediate disposition be one which requires registration, and is registered, or one which does not require registration. *Boysen v. Gibson*, 4 C. B. 121.

Cases cited in the judgment: *Palmer v. Moron*, 2 M. & S. 43; *Dixon v. Ewart*, 3 Meriv. 322.

2. *Authority of Master.*—Where, in consequence of damage to a ship, during the voyage, it becomes impossible to prosecute the adventure, the master has authority to sell her for the benefit of all parties interested: and a person employed by him to superintend the sale, may lawfully pay over the proceeds to him, or to his order. *Ireland v. Thomson*, 4 C. B. 149.

Cases cited in the judgment: *Stephens v. Badcock*, 3 B. & Ad. 354; *Cartwright v. Hataley*, 1 Ves. jun. 292; *Plato v. Santos*, 5 Taunt. 447; 1 Marsh. 132; *Sims v. Brittain*, 4 B. & Ad. 375; 1 N. & M. 554.

See *Bottomry: Charter party*.

SLANDER.

Privileged communication.—Under statute 5 & 6 Vict. c. 109, the vestry, on precept from the justices, are to make out and return a certain number of persons within the parish, qualified and liable to serve as constables; the list is to be affixed on the church-door, and notice given when and where objections will be heard by the justices, who are empowered at a special sessions, to strike out of the list the names of persons not qualified or liable to serve. At a vestry held in pursuance of that act, the plaintiff's name was inserted in the list of persons qualified and liable to serve, and he attended a session for the purpose of being sworn in, when the defendant, a parishioner, objected to him, and made a statement to the justices, in the presence of other persons, imputing injury to the plaintiff. In an action for slander the jury found that the defendant made the statement *bond fide*, believing it to be true: *Held*, that the statement was properly made before the justices, and was a privileged communication. *Kershaw v. Bailey*, 1 Exch. R. 743.

TRESPASS.

Ward in Chancery.—Justification by command of party seized.—To a declaration in trespass *quare clausum fregit*, defendant pleaded that the *locus in quo* was the soil and freehold of *T.*; and justified as servant, and by command of *T.* Replication, traversing the command.

T. was a minor and ward in Chancery, and defendant the receiver and general agent for the estate.

Held, that from this the jury might infer a general authority to do the act, and, if they so inferred, ought to find for the defendant. And that, upon this issue, the plaintiff was not entitled to show that he held under a lease, and to insist that the act was therefore such as an infant could not authorize. *Ever v. Jones*, 9 3 Q. B. 629.

WARD.

See *Guardian and Ward: Trespass*.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 5, 1850.  
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RUMOURD TRANSFER OF THE IRISH EQUITY JURISDICTION.

A RUMOUR has obtained extensive circulation and some credence in well-informed circles, that the Court of Chancery in Ireland is doomed, and that Sir William Somerville—the representative of the Irish government—has a bill in preparation for transferring the jurisdiction of that Court, as well as that of the Equity side of the Exchequer in Ireland, to the Court of Chancery in England, upon terms and conditions calculated, as it said, to insure the approval and support of certain persons, from whom, at first sight, it might be expected that such a project would meet with very determined opposition. The grounds upon which the proposed abolition is justified are various, but may be thus briefly stated:—

It is said, in the first place, that the amount of the rental of Ireland under the management of the Court of Chancery is so enormous, and the property under its superintendence so badly managed, as imperatively to demand legislative interposition, in order to save landlord and tenant from ruin. It is further alleged, that the depression and exhaustion affecting every description of property in the sister kingdom, in combination with the establishment of a new jurisdiction for the sale of Encumbered Estates in Ireland, have left the Courts of Equity in that kingdom without sufficient employment: in other words, that the legitimate business of the Courts has become too limited to justify the maintenance of existing institutions with their auxiliary and expensive machinery. Lastly, it is suggested, that the amalgamation of the Courts peculiarly entrusted with the administration of property would, in a political point of view, tend materially to cement the union between the two kingdoms, by encouraging

the introduction of English capital into Ireland, and its application in developing the industrial resources of the country, and giving profitable and permanent employment to the people.

In support of the first of these propositions, the mismanagement of the estates administered by the Courts of Equity, the advocates of the measure point triumphantly to the evidence taken by the Select Committee of the House of Commons last session, on reviewing the Courts of Chancery and Exchequer (Ireland), which was ordered to be printed on the 29th June. Before this Committee, undoubtedly many persons were examined, who, from their positions, must be intimately acquainted with the system of procedure and practice of the Courts in Ireland, and whose opinions on any matter connected with those Courts, are justly entitled to great weight. Considering that nearly all the witnesses so examined now hold or have lately held offices in the Irish Courts of Equity, the unreserved and disinterested freedom with which they point out and explain the evils and abuses of the system under which they have been long acting, is highly creditable to their candour and independence of character, and evinces a clear-sightedness and an absence of prejudice rarely found amongst any body of men, and which we conscientiously believe, do not exist to the same extent amongst the members of any other profession. Having perused the printed evidence given before the Select Committee by these able and experienced persons we find, that although they one and all admit, and even suggest the expediency of statutory intervention, and consider that such interference would be justified by the peculiar circumstances of the country, no one amongst them has hinted that it is necessary to lop off the diseased limb, or that the cure for admitted evils is to be found in the transfer now proposed.

It is said that the Courts of Equity in Ireland have now the management of estates of the value of £7,700,000. Every one admits that there is no actual competition between the management of land and the Court of Equity, and that the Court of Chancery is not and never can be made the place for the prosperous management of the property of the country. Sir Edward Sugden, one of the greatest practical authorities, suggests, that by legislative interference the Court of Chancery may be prevented from taking possession of estates without some assignable limit, but where it is inevitable that the Court should have the management of an estate for an interval, he suggests that increased power should be given to the Court with relation to the management and cultivation. In cases where the property of minors or lunatics comes under the control of the Court, and the Chancellor, representing the Crown, comes in as guardian, and does what he considers just and right as regards the person entitled to the property, no additional power is required, but in the larger class of estates placed under the management of the Court on behalf of creditors, the case is altogether different. The distinction is clearly and forcibly explained by Sir Edward Sugden, in his examination. He says,—

“There has been a great misapprehension in the public mind as to the power of the Court of Chancery. In the case of the estates of minors and lunatics the Court has perfect power; and I have dealt with lunatic estates just in the same way as I would have dealt with my own estate. In the case of a peer who was a lunatic, living on his own estate, I added a large sum to his allowance on my own motion; in order that as he was living on his own estate he might be able to live as the landlord, and fulfil the duties of landlord to his tenants. The Court has the power to act as it thinks proper to any extent in these cases, but in cases of judgment creditors and mortgages it is said there is no money laid out in repairs, or in favour of the tenants; of course there is not, because the Court has no power; the creditor does not come into the picture; the estate he looks upon it merely as a security for his debt, and he does not care whether the same is dilapidated or whether the land is out of heart. He says, ‘I will have every shilling of my debt out of the estate.’ Now, I would correct that at once. In my opinion, if an estate is brought under the administration of the Court for the benefit of creditors, public necessity demands that it should be managed as it were the master of the estate for the time, you should give to the Court all the power which belongs to an owner, and therefore, I should feel no difficulty if I had the power of making a law which should

give to the Court a power to be exercised of course according to its judicial discretion, in relation to the estates of encumbrancers generally, as to their management, cultivation, and allowances, and so forth, in the same way as the Court would do with the estates of minors or lunatics.”

The great point insisted upon by all the witnesses, however, was, that it is impossible for a Court of Equity to manage an estate beneficially to the community at large, consistently with a regard for the rights of all parties interested; the Court ought not to continue to have the management of landed property longer than is absolutely necessary. This principle has been already adopted by the Legislature, and is embodied in the act 12 & 13 Vict. c. 17, “for Facilitating the Sale and Transfer of Encumbered Estates in Ireland,” to which the attention of our readers has already been directed. (Ante, p. 37.) The main, if not the sole, object of that measure is to get incumbrances paid off as quickly as possible by the sale of the estate. So far as the Court of Chancery interfered with the sale of estates, its functions have been judiciously abrogated; and as the new tribunal to which so large a portion of its power and business is transferred has only just commenced operations—and no conflict has yet arisen between the two jurisdictions,—the incompetency of the Court of Chancery advantageously to manage encumbered estates, has ceased to be a grievance. Indeed, we apprehend that any interference with the powers possessed by the Court of Chancery at this time, would tend to mar, rather than promote, the success of the great experiment in progress under the Encumbered Estates Act.

That the business of the Equity Courts in Ireland should have considerably diminished can surprise no one who remembers the succession of events peculiarly affecting property in that country, which have taken place within the last four years. It is to be expected, as well as hoped, however, that the depression under which individuals in that country are suffering, is but temporary, and no sooner are the proprietors of property raised from their prostrate position, than the dormant functions of a jurisdiction essential to the equitable administration of property will be restored to their exercise, and the number employed will be increased. It is not, therefore, to be regretted that the political advantages of a transfer of the Irish Equity Jurisdiction to the Court of

of the Court of Chancery presided over by Vice-Chancellors in Ireland. The only equity judges in that country are, the Chancellor, and the Master of the Rolls. Whether this distinction affords any good reason for retaining the equity province of the Court of Exchequer, is a question which may be open to discussion, and which those familiar with the practice of the Equity Courts in Ireland are most competent to decide.

It is suggested, that the leading members of the Bar in Ireland conversant with equity practice, are not indisposed to sanction the transfer upon the understanding that the act is to contain a provision enabling them to practise in the Courts of Equity in England, with the same rank and standing they now have at the Irish Bar. How this is to be managed, we cannot readily conceive. If personal interests are to be consulted in such a matter, however—and we are far from asserting that they should not—there is another class of practitioners whose interests are as deeply involved, and whose views are as well entitled to consideration, as those of the leading members of the Irish Equity Bar. We need scarcely say, we allude to the Irish Solicitors. They cannot be transplanted to Westminster or Lincoln's Inn. It is not stated that they have been consulted in reference to the transfer of the equity jurisdiction to the English Courts, and we cannot suppose that any Government would resolve to carry out so important a measure without at least endeavouring to obtain their approval, we entertain no doubt that although the project has been suggested and considered, it has not been determined upon. The only measure we have reason to think actually contemplated is, the abolition of the equity jurisdiction of the Court of Exchequer, and the retransfer of its business to the Court of Chancery in Ireland. It will be recollected that a similar arrangement was effected in England under the provisions of the act of 1853, and it must be admitted, that independently of the saving effected by the change, experience has proved that the exclusive administration of the equity jurisdiction by the Court of Chancery is not merely convenient, but operates in many respects beneficially to the public. Seven years have passed since the act transferring the equity jurisdiction of the English Exchequer to the Court of Chancery passed, and we have never heard it referred to with regret. The cases, we are aware, are not strictly analogous. There are no branches

ABUSES OF SPECIAL PLEADING.

No greater mistake can be imagined than that the legal profession as a body are indisposed to promote measures of reform connected with the administration of justice, unless it be the notion that has obtained currency in some ill-informed circles, that the profession generally are interested in the maintenance of abuses. Law reformers of every shade and degree are to be found amongst the busiest, most active, and most prosperous members of the profession. The difference between professional men and laymen desirous of effecting amendments in the law, is that the lawyer looks on the matter with a practical eye, and whilst sensible of the evil, does not disregard the difficulties that may arise in applying a remedy,—difficulties constantly overlooked, where there is zeal without knowledge.

These observations are suggested by the perusal of a pamphlet recently published in the shape of a letter addressed to Sir John Jervis, her Majesty's Attorney-General, upon "the Uses and Abuses of Special Pleading," by Mr. William Corrie—a member of the Common Law Bar,—himself a pleader—and well acquainted with the subject on which he writes. Mr. Corrie denounces the whole system of special pleading as one of the greatest abuses existing in the administration of justice, and thinks it disgraceful to the profession, that no attempt is made to remove this plague-spot from our jurisprudence. His remedy, as may be supposed, is of the most sweeping description. In laying the learned author's remarks and suggestions before our readers, and admitting them to be well entitled to attention, we must guard against being supposed to give unqualified approval to what is at best but a unilateral view of the question. The grounds upon which the system of special pleading is impeached, are thus enumerated by Mr. Corrie:

"That large numbers of the cases brought before the Courts are decided upon techni-

cal objections foreign to the merits of each case.

"That the so-called science is not deserving of the name.

"That it is uncertain, varying from day to day, one Court not being able to agree with another as to the application of its most elementary principles.

"That in consequence of this uncertainty no practitioner can advise his clients with confidence, no suitor in the clearest case can be certain that he will obtain a judgment in his favour.

"That the costs of the party who has justice at his side but is defeated by legal trickery, are in every case large, in many instances compared with the subject matter in dispute enormous and frequently perfectly ruinous to the litigants."

The instances selected to show how often substantial justice is sacrificed by an adherence to technical objections arising out of the rules of pleading, under the various titles of arrest—of judgment—*venire de novo*—mistake in the form of action—special demurrer, and judgment non obstante veredicto, regard for space precludes us from copying; but under the head of "special demurrer," we find the following remarkable illustration which affords a favourable specimen of the writer's style and manner:—

"Mr. D. has a claim which is founded in justice, his case is clear, he consults his attorney, and finds that judgment can be obtained in six weeks. The defendant is a rich, though a litigious man, and the debt must therefore be paid as soon as the suit has terminated, and Mr. D. may expect his money on a day then fixed. The declaration is filed, it is good in substance, there is no defence on the merits, but the defendant's pleader points out by special demurrer, that the name of a party mentioned in the declaration is indicated by an initial. The case is argued and judgment given for the defendant. Poor Mr. D. calls for his money on the day appointed, but, instead of receiving his debt, the attorney presents him with a bill of costs; and informs him that ultimate success is as distant as when they first met. The client thinks that his attorney is ignorant, but inquiries are made and it turns out the failure was not the fault of the attorney; that an eminent pleader prepared the declaration, that a distinguished barrister argued in support of it, but that a young gentleman had raked up some old law in support of the objection. and the judges were obliged to decide against the justice of the case in favour of chicanery. Poor Mr. D. grumbles but is without redress, he pays the costs and leaves the office. A year afterwards times are had with Mr. D., he is pressed for money, in his turn becomes a defendant in an action, his previous failure is brought to mind, and he hints to his attorney that a little time is of importance, and that, perhaps, the plaintiff's

pleader may commit the same mistake as was made in the cause of *D. v. E.* The declaration is filed, as good luck will have it, the initial question again arises; the objection is taken, the case is argued, but poor Mr. D. is again defeated. In the second action the initial was the letter *E.*, in the first case it was the letter *D.* The Court held the objection good in the case of a consonant, bad in the case of a vowel! I am not joking. I refer to the authorities: *Applemans v. Blanche*, 14 Moe. & Wels. 154; *Lomax v. Landells*, 18 Law J., C. P. 88."

We are inclined to think that the observation made by Mr. Corrie, that "the voice of the profession is now all but unanimous," that the new Rules of 1834 have aggravated all the evils created by the system of special pleading, is not without foundation. The difficulty the judges have found in framing a form of plea under the new rules applicable to the payment of money into Court in the various cases arising in practice, which was remarked upon some months since in this publication, is now cited to prove how signally the judges themselves sometimes fail when they try to put the rules of pleading into practice. The difference of opinion between the judges of the Queen's Bench and the Barons of the Exchequer, as to the effect of a plea in trespass denying that the *locus in quo* was the plaintiff's is also commented upon with a similar object.*

As to the *ways* of pleading, as distinguished from its abuses, though it appears in the title page, it occupies so small a portion of the pamphlet as to remind one of the worn-out joke of the chapter headed "Of Snakes in Iceland," which consisted only of the words, "There are no snakes in Iceland." According to Mr. Corrie, special pleading lamentably fails in that which is its only alleged merit,—preparing a single, specific, and material issue for trial; but this proposition he has not taken much pains in elucidating, and, as it strikes us, has totally failed in substantiating. His argument, however, has more weight when he inquires, if the system of pleading adopted in the Superior Courts be the best, why is it not extended to all our judicial inquiries? "If," says he, "you want to recover a debt of 20l., you are sent to a Court where this boasted science is dispensed with. But if you want to recover 21l., then by the law of this country you can only do so under the system of trifling, tricking, chicanery, which I have described." The conclusion,

* *Purnell v. Young*, 3 M. & W. 296; *Harrison v. Dixon*, 12 M. & W. 145; *Whittington v. Bowett*, 5 Q. B. Rep. 139.

to which the learned writer comes and the remedy he suggests must be given in his own words:—

"Am I prepared then to dispense with the services of our present judges? to shut up Westminster Hall, and to entrust the administration of all the laws of the country to these revived Anglo-Saxon [County] Courts. Certainly not. It is the procedure in our Courts that I object to, not to the law (as distinguished from the procedure) which is administered in them. Have you then, it may be said, any plan of your own? Do you wish to lop off the special demurrers, and to correct some few glaring defects which you have pointed out, and which are admitted on all hands to exist? I answer, I have plans to suggest, which involve a destruction and cutting up of the whole system, root and branch; no mere lopping off the excrescences. My plan would not involve the necessity of any change in the officers of the Court, no new knowledge would be required in the practitioners; it might be commenced to-morrow; it might be tried in one Court, and if it succeeded, it could afterwards be extended to the other Courts. I would engraft a little of the County Court system on the practice of the Superior Courts. The parties, or their agents, should be called before an officer of the Court as before the County Court Judge. This officer should ascertain the point or points on which the parties differed. If they were questions of fact, he should prepare the issue to be sent for trial by a jury, just as a Court of Equity now sends an issue. If they were questions of law they should be stated in a case for the opinion of the Court, as under the 3 & 4 W. 4, c. 42, s. 25, and by the revising barristers under the Reform Act. The opinion of a Court of Error might be taken just as under the present system, but I would not send to eight judges in the Exchequer Chamber, and afterwards to the House of Lords, quibbles about vowels and consonants."

This is a bold, and in some respects a novel, proposition. In conjunction with other changes, it is well entitled to consideration; and we may probably avail ourselves of another opportunity to enter more at length upon a discussion of its merits.

SECURITY OF SAVINGS' BANK DEPOSITORS.

The extensive defalcations of the deceased actuary of a savings' bank in one of the northern counties has directed public attention to the insufficiency of security possessed by the depositors in savings' banks, and suggested the necessity of legislative interference in order to insure a more effectual control over the funds of those important institutions. A notion has undoubtedly prevailed, amongst those most interested in

obtaining correct information on the subject, that the government is responsible for all monies deposited in a savings' bank. This is altogether a misapprehension. Government is responsible to the depositors in savings' bank as it is to any ordinary purchaser in the government funds, when the money deposited is actually invested in government securities, but not otherwise. The absence of government responsibility was asserted and maintained—it might almost be said established—by the debates in parliament in the last and preceding Sessions, upon the stoppage of the Tralee and Dublin Savings' Banks. In the course of those discussions, the justice and expediency of an interposition on behalf of the unfortunate depositors was strongly urged upon the government, but no one asserted the existence of a legal claim.

The responsibility of the trustees and managers of savings' banks stands upon a different footing, but it will be found in general to afford no adequate security to depositors. It seems to have been the policy of the legislature, in framing the various acts for the regulation of savings' banks, to encourage persons of local influence and importance to act as trustees and managers. Those persons are expressly prohibited* from deriving any benefit or emolument from acting in that capacity, and it has therefore been deemed reasonable to protect them from personal liability in case of deficiency, unless where the monies of depositors have actually been personally received and not disposed of according to the rules of the institution. The first enactment as to the liability of trustees and managers, is contained in the 9 Geo. 4, c. 92, by which the previously existing laws were consolidated and amended. The 9th section of that act is in these words:—

"That no trustee or manager shall be personally liable, except for his own acts and deeds, nor for anything done by him in the execution of this act, except in cases where he shall be guilty of wilful neglect or default."

This provision was certainly objectionable from its vagueness and uncertainty. It left a matter upon which it was obviously expedient that no doubt should exist involved in serious doubt. The intention of the legislature was expressed with more clearness, exactitude, and specification in the recent act amending the laws relating to savings' banks, 7 & 8 Vict. c. 83, which contains an enactment in these terms:—

* By stat. 9 Geo. 4, c. 92, s. 6.

"That no trustee or manager of any savings' bank shall be liable to make good any deficiency which may hereafter arise in the funds of any savings' bank, unless such persons shall have respectively declared by writing under their hands and deposited with the Commissioners for the Reduction of the National Debt, that they are willing so to be answerable; and it shall be lawful for each of such persons, or for such persons collectively, to limit his or their responsibility to such sum as shall be specified in any such instrument; Provided always, that the trustee and manager of any such institution shall be, and is hereby declared to be, personally responsible and liable for all monies actually received by him on account of or to and for the use of such institution, and not paid over or disposed of in the manner directed by the rules of the said institution, and an abstract of the above provisions shall be enrolled as one of the rules of the institution."

It is now quite clear, therefore, we apprehend, that a manager or trustee who has not voluntarily given an undertaking in writing to make himself answerable, is not in any case of deficiency personally responsible, unless where monies have come into his hands which he has misappropriated. Wilful neglect, of the duties of trustee or manager, whatever degree of moral culpability may attach to it, no longer creates a ground of legal liability. The simple question is, has the trustee or manager, sought to be made responsible, actually received and misapplied the money ascertained to be deficient? No person acting as trustee or manager can now be made liable for monies received and misappropriated, unless he has deliberately undertaken to guarantee the solvency and integrity of the defaulting party.

Considering the importance of savings banks in a political and social view, and the peculiar claims the depositors in such institutions have on the legislature for protection, it is well deserving of consideration whether some further security should not be provided? There is reason to believe the subject will be brought under the notice of parliament early in the ensuing Session. Meanwhile, no apology is needed for directing attention to the existing state of the law upon a matter of such general interest.

LAW OF ATTORNEYS.

LIEN ON ORDERS OF COURT.

In the case of *Lord v. Hurdington* (Jan. 362, Lord Eldon) said that a solicitor who was discharged by the court was not to make use of the non-production of papers

in order to obtain what was due to him. Vice-Chancellor Wigram, also, in *Griffiths v. Griffiths*, 2 Haro. 500, held, that if a client discharges his solicitor, the Court will not take the papers from the latter, unless upon payment of his bill. The case of *Heston v. Mettidge*, 8 Myl. and Cr. 185, was not inconsistent with these decisions, because in that case the solicitor voluntarily withdrew from his client's employment in the suit.

In the recent case of *Clifford v. Turrill*, 2 De Gex. & S. 1, the solicitor for the plaintiff had obtained an order which was passed by the Registrar but not entered, and therefore was incomplete. The client chose a new solicitor, who called upon the previous one to produce the order for the purpose of being entered. The original solicitor refused, on account of his lien for the costs of the cause and of his costs of attendance.

Vice-Chancellor Knight Bruce decided, that the lien could not be allowed to intercept the completion of the order of Court, and directed the solicitor to attend and produce the order to the proper officers, that it might be entered; and that the order when entered should be returned to the solicitor, and that he should be paid 20s. for his costs of attendance. His Honor would add to the order, if required, that such production should be without prejudice to the solicitor's lien, and that he should be entitled to a lien on any funds paid or to be paid into Court in the cause, for the amount of his bill of costs in the cause.

TAXES ON JUSTICE.

We extract the following from our Irish contemporary *The Press*:

"Bentham spent a considerable portion of a distinguished life in undiminished vigour, and in hearing for the principle that there should be no taxation of justice, and that the expenses of Court judgements should be borne by the State, and not by the litigants. Summary of the principle is, in its own way, a little way, and has made in such practice, in the distinguished ornaments of the law in both countries have occasionally avowed themselves disciples of the doctrine; but practically it can not be said to have had any recognition, except perhaps in the case of the poor, and the poor of the stamp duties, on writs, and affidavits, and common forms, and such like, and in the case of this was a mere drop in the ocean, and therefore its great influence was not felt, and the principle was not carried out before long to the fullest and most satisfactory extent."

The expectation is raised by a report of a Select Committee of the House of Commons, which has just issued, on the subject of fees in Courts of Law and Equity. The details of that report are not only very interesting, but quite respecting the law, and equity, as administered in Westminster, are not the pure essence which Clubs of Company would have us believe them to be. However, as these are topics for another time, we now refer to the report as affirming and recommending the principle maintained by Bentham; and looking at the substance of that report—the facts and data by which its suggestions are supported—and the public spirit which is abroad—there is every reason for the expectation, that before long the salaries of the judges and officers of the various Courts, and all the expenses connected with the machinery of our jurisprudence, will be borne out of the funds of the State, and not directly out of the purse of the suitor immediately concerned in the proceedings.

"None are more interested in this projected reformation, than the attorneys and solicitors. According to the present system they are quasi disbursements in Court fees and stamp duties, no more than accountants—unpaid accountants—between the Crown and their clients, and when they come to settle their costs, the odium and opprobrium of the sum total is thrown upon their shoulders, though, as is frequently the case, particularly in the costs of Equity suits, one-third of the entire amount consists of what may be termed fees of Court, which very often the professional man is obliged to provide out of his own funds."

CITY OF LONDON CORPORATION REFORM ACT, 1849.

Mr. PULLING has ably edited this Act, with the City Election Act of 1725, and added several explanatory notes and comments, accompanied by the Statute-Book.

The publication forms a supplement to Mr. Pulling's Treatise on the Laws and Customs of the City and Port of London.

The Act of last Session is entitled "An Act to amend an Act passed in the 11th Geo. 1st, for regulating Elections within the City of London, and for preserving the Peace, good Order, and Government of the said City." And the following is Mr. Pulling's analysis of the Act:—

The first section repeals so much of the 11 Geo. 1st, as regulated the right of voting, and the mode of polling, at wardmote elections in the City of London.

The second confers the right of voting for aldermen, common councilmen, and ward officers, on the freeholders, and the owners of tenements, and the occupiers of houses, in the City of London.

The third orders the formation of the lists of electors.

The fourth regulates the service of summonses upon freemen.

The fifth the qualification of common councilmen.

The sixth the period of polling at wardmotes.

The seventh and eighth set forth the declaration to be made by electors in lieu of the oath previously in force, and the punishment for false declarations.

The ninth provides for the disqualification of aldermen and common councilmen.

The tenth and eleventh regulate the declaration to be made by freemen, in lieu of oath or affirmation, on taking up the freedom.

And the twelfth declares the act to be a public act.

Summary of contents.—To sum up concisely the operation of this act, it is, in some instances, a mere *repealing act*; repealing certain of the provisions of the 11 Geo. 1, c. 18, without substituting any other. Thus it absolutely repeals sections 2 and 3 of the latter act as to voters' oaths, and sections 9 to 12 as to payment of rates. The new act is, in some other respects, a mere *enabling statute*, giving, in addition to rights conferred by previous law or custom, a new right. Thus, section 5 creates a new species of qualification for common councilmen, which, however, does not appear to take away the qualifications recognized by the ancient law and custom of the city. But at the same time the present act introduces various positive regulations in the municipal constitution of the city, which entirely alter the old law, settling the qualification of electors at the wardmotes, the mode of making out the voters' lists, the mode of polling, the mode of service of summonses, &c., and the form of declaration in lieu of the oath on taking up the freedom, and voting at wardmote elections.

As the legal effect of some provisions of the act have already given rise to discussion, it may suffice to shortly allude here to the views taken by the author on the subject, put forth of course at this moment with diffidence, in the absence of any authority for them from the Courts at Westminster, or the law officers of the corporation.

The four *novel questions* appear to be, 1st, Whether, under the 2nd and 5th sections, it is necessary for electors and common councilmen to be registered in the register of voters in respect of the premises from which their qualification is derived? The question is here answered in the negative, thus getting rid of a difficulty which would disfranchise many of the higher class of freemen, who are registered as liverymen. 2ndly, From what source are the freemen occupiers' lists to be made out? This the author has disposed of by suggesting that, in the fifth under the act, as to be in force, the whole year from the 1st of November to the 1st of January, the names of those who have been registered during any part of the year, viz. both those on the parliamentary register, ex-

piring on the 1st of December, and these on the new register, coming in force on that day. Ardlly. Can any election be valid previous to the 1st November, 1849? This, although of comparatively small practical importance, involves some important legal principles. The author conceives, that, as the 3rd and 7th sections of the act would not legally be construed to come into operation until the 1st November, the old constituency (revived by the repeal of the 11 Geo. 1, c. 18,) are in the interim legally entitled to vote together with those qualified by the 2nd section of the new act, without being required to take any oath that their names are on the *occupiers' list*, &c. Lastly, does the qualification for common councilmen, conferred by the 5th section, exclude other qualifications, derived from the old law and custom of the city? Authorities are here cited to show that it *does not*; and it will be seen also, that but for the oath prescribed by the 7th section, the same reasoning would apply generally to the qualification of electors, as the new act, unlike the 11 Geo. 1, c. 18, contains, in both the 2nd and 5th sections, only *affirmative words*."

THE ATTORNEY'S CERTIFICATE DUTY.

To the Editor of the Legal Observer.

SIR,—The only difficulty, so far as I am aware, in the way of the repeal of this inequit-

able tax, consists in the inability, not to say unwillingness, of the Chancellor of the Exchequer to part with a source of revenue which, though not of any considerable amount, has yet proved certain and constant.

Now there can hardly be a doubt entertained, that if some one of the substitutes from time to time recommended in your columns, were shown to be capable of yielding at least the same amount, and to be free from popular prejudice, the government would not be unwilling to adopt it.

What, I would ask, could be the objection to a tax of twenty shillings a year on every individual engaged in any professional practice.

I would include not only the members of the learned professions, but engineers, architects, surveyors, factors, brokers, accountants, &c. &c. Few would be found to object to or evade so moderate a duty, whilst many young practitioners who now shrink from the payment of twelve or eight pounds as long as they can, would then cheerfully pay one pound as the price of their professional recognition.

Meanwhile the attorneys owe to themselves the duty of pressing for "a total repeal."

G. A.

Southampton, 31st Dec. 1849.

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1850.

Queen's Bench.

Clerks' Names and Residences.

Armstrong, John Knight, 6, Thame-place, Temple-bar; and Whitechapel
Aston, Frederick, 6, Upper Eaton-square, Belgrave-square
Aspinall, Charles, 38, Webber-square; Doncaster; and Kenton-atreet
Abell, George Mutlow, 28, Grove-place, Brompton; Ledbury; Temple; Harwood-street; and South-terrace
Ainger, Arthur Robert, 1, Grenville-street; and Ely
Allway, Samuel Plomer, 13, Millbank-row
Addenbrooke, Thomas, 6, Gomm-street, Alders-street, Islington; (Walsall); and Kings-square
Atkinson, Edward, 2, Ormond-place, Richmond, Surrey; More-street, Chelsea; East-street, Red-lion-square
Apprey, Joseph Cox, 8, Featherstone-buildings; Everett-street
Ashley, Alfred, 5, Charles-square, Hoxton
Arnold, Thomas, 2, King's-bench-walk, Temple; Yeovil, Somerset; 2, Albert-terrace, Hampstead-road; and 9, Hunting-st., Bedford-square
Reynham, Walter Lewis, 62, Frederick-st., Gays-iin-road; Darnley; and Gough-street, South

To whom Articled, Assigned, &c.

George Harper, Whitechapel
George Vincent, King's-bench-walk
John Collinson, Doncaster
Francis Higgins, Ledbury
Hugh Robert Evans, jun., Ely
Henry Johnson, Red-lion-square; William Gregory, Old-street
Charles Pidoock, Worcester; Charles Frederick Darwall, Walsall
Fenton Robinson Atkinson, Oak-house, Pimlico, Strand; John Abbott, Essex, and Lincoln's-inn-fields
E. Aspinall, Farnwell, Essex; R. K. Lane, 20, Angell-street
Henry Ashley, Hoxton
Henry William Dickenson, Poole, Dorset; Edwin Newman, Yeovil
Edmund Singer Barton, Daventry

- Bingham, George, 18, Brown-street, Manchester
 Bagshaw, John, jun., Manchester
 Butlin, Thomas, 14, Lee-st., Kingsland-road; Nottingham; Sidmouth-street, and Church-road
 Baddeley, Henry John, 27, Colet-place, St. George's East
 Barrett, John William, Somerton; Stockland
 Barwis, Thomas Osmotherly, 6, Wells-street, Gray's-inn-road
 Brierley, George, Wakefield
 Bennett, John William, 13, Claremont-place, Pentonville; Banwell
 Briggs, John Pitts, 6, Stanhope-st., Hampstead-road
 Bousfield, Walter Stanton, Tooting, Surrey
 Bompas, George Cox, 11, Park-road, Regent's-park
 Burroughs, Francis Cooper, 2, King's Bench-walk, Temple; Weston-super-Mare; 9, Red-lion-sq.; 9, Great Turnstile; Elam House, Hampstead; and Wells, Somerset
 Come, Watson, 28, Everett-street, Russell-square
 Caddy, Harrington, Great Torrington; and 2, City-terrace
 Craven, John, jun., 4, Thornhill-bridge-place, Pontoaville; and Albert Terrace
 Coad, John Luskey, 32, Wharton-street, Lloyd-square, Pentonville; and Liskeard
 Cooper, John, Tetlow-bank, Broughton, near Manchester
 Clarke, Thomas, Uffculme; and Chester-terrace
 Cox, Jechonias, Bridgnorth
 Cooke, Joseph Percy, 80, Albert-street, Mornington-terrace; and Clifton
 Cost, George, 2, Adelaide-road, Haverstock-hill
 Coleman, William Rose, Gosport
 Cleather, William, 22, Stanhope-street, Park-place, Regent's-park
 Crossley, Alexander, Grove, Camberwell
 Cann, John, 12, Wilkes-street, Russell-square; Nottingham; Albion-street, Hyde-park
 Cocherell, William, Cambridge
 Clark, Joseph, 28, Finsbury-place
 Clarke, Frederic Fuhrmann, 58, Upper Bedford-place, Russell-square
 Calthrop, Thomas Douale, Morden-cottage, Blackheath
 Dewes, Charles Saunders, Ashby-de-la-Zouch; and Northampton-place
 Davies, John Stanley, Liverpool
 Dainty, George Goodall, 43, Liverpool-street, King's-cross; and Kettering
 Davies, Charles, jun., 25, Granville-square, Pentonville; Shirley; and University-street
 Day, William Ansell, 20, Upper Berkeley-street; Mayfield
 Davy, Robert Manning, 37, Norfolk-st.; Ringwood
 Dutton, William Henry, Newcastle-under-Lyme; Jubilee-street, Brunswick-square
 Dixon, Chas., 6, Diddington-pl., Lexington; Boston
 Edensor, Richard, Birmingham
 Eddowes, Thomas Walter, 106, Great Russell-st.; Derby; Guildford-street; Loughborough
 Ellis, Edward Jones, 67, Frederick-street, Gray's-inn-road
 Fraser, James, 6, North-terrace, Camberwell
 Feltham, James, jun., Hingham
 Fennell, Charles, 12, Lower Belgrave-place, Finsbury
 Frere, John, Stamford-brook, Hammer-smith; Whitechurch
 Thomas P. Bunting, Manchester
 John Bagshaw, Manchester
 George Eddowes, Nottingham
 J. A. M'Leod, London-street
 James Waldron, Hartswell; Charles Parsons, Temple-chambers
 Thomas Henry Street, Brabant Court
 William Stewart, Wakefield; Thomas Lee, Wakefield
 Emanuel William Violet, Banwell
 William Richard Barryman, Devonport
 Herbert Sturmy, Wellington-street, Southwark
 Philip Smith Cox, Coleman-street
 Henry Davies, Weston-super-Mare; Robert Davies, Wells
 James Vallance, King's-bench-walk
 William Evans Price, Great Torrington
 William Craven, Halifax
 Edward Lyne, Liskeard; J. Swarbrick Gregory, Bedford-row
 Charles Cooper, Manchester
 Richard Bowerman, Uffculme
 Thomas Gittin, Bridgnorth
 Isaac Allen Cooke, Bristol
 Robert Meggy, London-street
 Robert Cruikshank, Gosport
 Charles Parker, Lincoln's-inn-fields
 James Phillips, Lawrence Pountney-lane
 Abraham Cema, Nottingham; Francis J. Riddale, Gray's-inn
 Charles Henry Cooper, Cambridge
 George Clark, Finsbury-place
 Thomas Hamilton, Henrietta-street; Charles Fawcett; Charles Herwood Clarke, Chancery-lane
 John South-Ryder, Whitehall
 William Dewes, Ashby-de-la-Zouch
 Joseph Malins, Liverpool
 Henry Lamb and Henry John Neillship, Kettering
 Charles Davies, sen., Southampton; A. Jenkins, Newinn, Strand
 John Loxdale, Shrewsbury; Henry King, Mayfield
 Robert Davy, Ringwood
 W. Dutton, Chancery-lane; W. A. S. Pemberton, Symonds-lane
 David Thomas, Brecon; Henry Hammond, Furnival's-inn
 Edward Bell, Ashbourne; George Edwards, Birmingham
 Francis Johnson Jessopp, Derby
 John Henry Bolton, Lincoln's-inn
 Richard Dewes, Angel-court
 Samuel Heydon To Nave Olden, Hingham
 Benjamin Aptham, Salisbury; E. W. Aptham, Salisbury
 Thomas Fenn, Whitechurch

- Shuttleworth, Thomas, 10, Lower Calthorpe-street,
Gray's-inn-road; and Manchester
Southall, Thomas, 3, Bury-place, New Oxford-st.;
Worcester; Nottingham-terrace
Smith, Samuel Pearman, Walsall, Stafford
Stillwell, James, Uxbridge; New Windsor
Simon, Robert, Oswestry
Smale, Charles, jun., Bideford; 2, Johnson's-pl.
Harrow-road
Sprott, James, 7, Staple-inn
Smith, Geo. Fred., High-st., Hampstead; Maidstone
Sketchley, William, 5, Lamb's Conduit-street
Thomson, Benjamin James, Birkenhead, Chester
Timbrell, Thomas, Cheadle, Stafford
Teale, John, Leyburn, York; Bedale, York
Tytherleigh, Robert, 5, Norfolk-st.; Tavistock-sq.;
Leigh-street
Tooke, Edward, Morden, near Blandford; Everett-st.
Turnbull, Richard Carr, Augustus-square, Regent's
Park; 15, East-street, Lamb's Conduit-street,
Walter, Octavius Gardner, 7, Derby-st. Argyle-sq.;
Aldbury Lodge, Somerset; Frederick-street,
Gray's-inn-road
Wigg, John Stone, 46, Lincoln's-inn-fields
White, Charles, 33, West-square, Lambeth
Wade, Charles Martin, 52, Cambridge-st. Oxford-
square; and Halstead, Essex
Watson, Alfred, 40, Mornington-pl. Hampstead-rd.
Wheatley, Thomas, Bexley-place; Greenwich,
Kent; and Lewisham
Watts, William, 12, Wilmot-street, Russell-sq.;
Nottingham; Vincent-terrace, Islington; Pa-
lace-place, Whitehall; Lamb's Conduit-street
Wing, Frederick Gresham, 18, Hatter-street, Bury
Saint Edmund's
Wood, James, Radford, County North
Whately, George Hamilton, 36, Bryanston-square;
68, Lincoln's-inn-fields
Wood, Wm., Chorlton-upon-Medlock, Manchester
Woof, Richard, Boughton Fields, Worcester
Were, Anthony Berwick, 13, Saint Paul's-terrace,
Camden Town; River-st. Bath; Frederick-st.
Gray's-inn-road; and Ramsgate
Wedlake, William Orme, 15, Camden-street, Cam-
den Town
Wyane, William, Newcastle-upon-Tyne
Wasey, Arthur Hen., 40, Lamb's Conduit-street;
Clifton; Swinbourne
Wilkinson, William John, 4, Pelham-road, Brompton;
King's-road, Bedford-row; Kingston-upon-Hull; Little Britain
White, William Edward, Nottingham; Bramcote;
South Crescent, Bedford-square; Bloomsbury-
street; Loughborough
Wilshurst, George, 31, George-street, Euston-sq.
Woolmer, Shirley Nettleton, 15, Norfolk-street,
Park-lane
Watson, William, Hedon
Waterhouse, Thomas, 15, Stafford-place, Pimlico;
Northport-street, Hoxton; Bilton
Wiles, Harold, St. Ives; 43, Great Dover-road
Williams, Charles Henry, 34, Bedford-place; Chel-
tenham
Westhorpe, Geo., 5, New Millman-st.; Brentwood
Watts, John Edmund, Edgbaston
Young, Charles Waring, 23, Russell-square, and
Essex-street, Strand
Yates, Alfred, East India Chambers, Leadenhall-st.
William Sale, Manchester
William Lattett, Worcester
Samuel Smith, Walsall
Charles Stuart Voules, New Windsor
Richard Jones Croxon, Oswestry
Charles Smale, sen., Bideford
Richard Raven, 2, King's-bench-walk
Richard Hart, Maidstone
John Whall, Worksop; Philip R. Falkner, Newark-upon-Trent
John Whitley, Liverpool
Frederick Dowding, Bath; Thomas Crabbe, Cheadle
Thomas Dennis Peacock, Bedale; Chas. Thomas Haring, Bedale
Thomas Kennett, 2, Great Knight Rider-street
Edward Dyne, Bratton
Henry Gregson, Lancaster
John Frederick Reeves, Taunton
George Herbert Kindarley, 6, Lincoln's-inn-fields
William Mark Fladgate, Craven-street, Strand
Messrs. Sperling and Harris, Halstead
Robert Watson, Moorgate-street, London
William Stanley Masterman, Wine-office-court
Fleet-street
John Wadsworth, Nottingham
Frederick Wing, Bury-Saint-Edmund's
Robert Leeson, Nottingham; Chas. Augustus Wel-
by, Nottingham
George Rooper, Lincoln's-inn-fields
Charles Wood, Manchester
Edmund Thomas, Worcester
Frederick Dowding, Bath
R. Cheere, King's-bench-walk; H. B. Wedlake, do.
Robert Horne Hobbes, Stratford-on-Avon; Mark
Lambert Jobling, Newcastle-upon-Tyne
Henry Andrews Palmer, Bristol
John Wilkinson, Hull
William Enfield, Nottingham
R. Arnold Wainwright, 6, New-sq. Lincoln's-inn
Mearns, Thos., 24, Lincoln's-inn-fields
James Iveson, Hedon
John Mason, Bilton
Messrs. Allpress and Lawrence, Saint Ives
James Hoodie, Cheltenham
Francis Newcombe London, Brentwood
Henry Reece, Birmingham; Robert Dolphin, do.
Henry Young, Essex-street
Saml Yates, Leadenhall-street; E. Is. Sydney, Essex-
bury-circuit
1850, pursuant to Judge's Order.
Stephen Garrard, 13, Suffolk-street, Pall-mall East

Notice for last day of Hilary Term,

Hedgcock, Christopher George, &c. Agents, 11
Westminster

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Christ's Hospital v. Grainger and others. Nov. 1848; Nov. 14, 1840.

CHARITABLE BEQUEST.—FORFEITURE ON DEFAULT.

A bequest was made on certain charitable trusts, and in the event of default or neglect in its application as directed by the will, to be forfeited to another charity: Held, that lapse of time was no bar to the forfeiture, and that the default having taken place, the gift over took effect, notwithstanding a decree had been made for a scheme.

THIS was an appeal from the Vice-Chancellor of England, who had ordered the transfer to the treasurer and trustees of Christ's Hospital of the proceeds of certain charity property under a will. It appeared that John Kenrick, by his will dated in 1624, gave to the Corporation of Reading, the sum of 7,500*l.* upon trust to purchase lands and stock, and pay the yearly value thereof after the death of the testator's sister to the overseers of the poor, to be distributed among the poor of Reading as by the will directed; and if it should be disposed of contrary to the will, or the distribution remain unperformed for the space of one whole year, the fund to be transferred to the treasurer and governors of Christ's Hospital, London, for the relief and education of poor children therein. The corporation invested part of the fund in lands and buildings, retaining 3,600*l.* to carry out the trusts of the will. A decree was made on information filed in 1639, for the investment of the residue of the fund in land, and for the distribution of the charity, and in the event of default of distribution for one year according to the decree, the fund to be forthwith paid to Christ's Hospital, as in the will directed. The defendants, *Grainger and others*, were, in 1837, appointed trustees of the charity under the 6 & 7 Wm. 4, c. 76, s. 71, and a petition was presented for a new scheme, when the plaintiffs became aware of their interest in the fund, and that it had not been distributed for many years in conformity with the decree or the will, and filed their bill for a declaration of the ceasing and gift over to them by reason of such neglect and misemployment. The Attorney-General was made a defendant, but took no part in the proceedings in the Court below, but, upon the trustees desiring to prosecute an appeal, presented this appeal.

The Lord Chancellor said, that as the Attorney-General had taken no part in the discussion in the Court below, although properly made a party to the suit, and now appealed against the decree, it was, in effect, an original hearing. The practice in charity matters, however, not being very strict, the Court would not refuse to decide the case. The testator had made the gift over to Christ's Hospital dependent upon the conduct of the trustees, and the case of *Brown v. Higge*, 8 Vw. 461, cited at Bar, did not therefore apply, as the Court was bound

by the trusts of the will. As to the objection that the lapse of time was a bar, it did not apply to charity cases, and it was immaterial whether the forfeiture took place under the will or the decree, there being clearly neglect for more than a year in carrying out of the trusts. The appeal would therefore be dismissed.

In re one of the Coroners of Salop. Nov. 23, 1849.

CORONER.—WRIT OF ELECTION.—JURISDICTION.

Held, that where a writ for the election of a coroner has issued, it is de officio, and cannot be superseded or stayed unless there had been fraud in obtaining or in the use made of it.

THIS was an application to set aside or postpone the return to a writ for the election of a coroner for the county of Salop, the magistrates having subsequently to the issuing thereof, resolved to apply to the Crown to divide the county into two districts, and appoint a coroner for each.

Cooper in support of the application; *Karslake* appeared to consent thereto, and cited *Lessee of Lavelor v. Murray*, 1 Sch. & Lef. 76; and *Anon. & Ash. 237*.

The Lord Chancellor said, that after a writ had once issued, it was *de officio* and could not be superseded, unless there had been fraud in obtaining it, and refused the application.

Ashley v. Alden. Nov. 26, 1849.

BILL FOR ACCOUNT BY INFANT REVERSIONER AND TENANT FOR LIFE.—MISJOINDER.

Held, affirming the order of Vice-Chancellor Knight Bruce, appointing a receiver, that the making the mother, who was tenant for life, a plaintiff in a suit by an infant reversioner against the trustee for an account, did not amount to a misjoinder, although the better course would have been to have made her a defendant.

THIS bill was filed by an infant reversioner and her mother, who was entitled to a life interest in certain property, and was also a co-executrix with the trustee against the trustee for an account. The Vice-Chancellor Knight Bruce having made an order as prayed, this appeal was presented.

Cooper and *Bliton* for the appellant contended, that the mother had improperly been made a plaintiff as she might be accounting party to her co-plaintiff, and that there was no evidence of misapplication of the assets to justify the appointment of a receiver.

Bacon and *Terrell* were not called upon.

The Lord Chancellor said, that although it might have been better to have made the mother a defendant, as regarded the defendant it did not amount to a misjoinder. The trust

too had not admitted his answer, the matter in which the receipts were applied, beyond a sum of 300, which appeared to have been paid to the mother. The appeal would therefore be dismissed with costs.

Berry v. Attorney-General. Nov. 26, 1849.
REHEARING.—PETITION.—LEAVE OF COURT.
—PRACTICE.

A petition of rehearing by a party not on the record was ordered to be taken off the file with costs by motion, where leave of the Court had not been previously obtained.

There was a motion to take off the file, with costs, the petition of rehearing in this case by a party not on the record, no leave having first been obtained.

J. Parker and Thomas in support.
Malins and Rosburgh, contra. cited *Giffard v. Hort*, 1 Sch. & Let. 289; *Brookfield v. Bradley*, 2 S. & St. 64; *Gwynne v. Edwards*, 9 Beav. 22.

The Lord Chancellor ordered the petition to be taken off the file, and the deposit returned to the petitioner, less the costs of this application.

Vice-Chancellor of England.
Gleadow and others v. Hull Glass Company.
Nov. 17, 1849.

LIABILITY OF SHAREHOLDERS IN RESPECT OF CONTRACT CONFIRMED AT GENERAL MEETING.

Where the shareholders in a joint-stock company at a public meeting confirmed the contract entered into by the trustees of the company for the purchase of a patent. Held, that the trustees were entitled to an indemnity from the company against an action by the patentee for the recovery of the purchase money.

The plaintiffs, Thomas Ward, Gleadow, George Buckton, and Thomas Wilson, the trustees of the Hull Glass Company, had, on behalf of the company, obtained a license from one Isaac H. Bedford, of Birmingham, to work a patent of stirring and cutting glass, and had covenanted to pay to the patentee a sum of 500*l.* and an annuity of 150*l.* for the term of 14 years for the same. The contract was confirmed at a meeting of the shareholders in March, 1847. The plaintiffs, in January, 1847, ceased to act as directors, and the new directors, finding the patent did not answer refused to pay the annuity. The patentee having brought an action against the plaintiffs to recover the arrears, this bill was filed against the company for an indemnity against the annuity.

Bethell and Glasse for the plaintiffs; *Stewart and Lewis* for the defendants; *Giffard and Anstey* for two others of the former directors.

The Vice-Chancellor said, that the right of the plaintiffs to an indemnity arose from the time when the shareholders adopted the contract at the general meeting, and made the order as prayed.

Vice-Chancellor Knight, Esq.
Pauley v. Lincoln Waterworks Company and another. Nov. 19, 1849.
ARBITRATION, CONTRACT, COLLUSION, CONSPIRING, FRAUD AND COLLUSION, EXCEPTIONS OF ANSWER, INSUFFICIENCY.
An arbitrator awarded, in respect of additional works erected for a railway company, a bill more than the contract claimed, but without stating the grounds of his award; held, that he was bound to answer the interrogatories as to the data on which his award proceeded, in an action charging fraud and collusion in the award, where he had neither pleaded or demurred.

The plaintiff had entered into a contract to execute certain works contained in the specifications and plans, at the prices in the schedule thereto annexed, and any additional work to be paid for at a rate certified by the company's engineer. Additional works had been executed, for which the plaintiff claimed 900*l.*, but Mr. Hawksley, the engineer, had certified that he was entitled to 300*l.* only. This bill was then filed against the company charging collusion, and requiring Mr. Hawksley, who was made a defendant, to set out the data on which his award had proceeded. Mr. Hawksley, by his answer, denied all fraud and collusion, but refused to set forth the data on which he had made his valuation. The plaintiff excepted to the answer for insufficiency, but upon reference to the Master, the answer had been found sufficient, whereupon these exceptions were taken to such finding.

Wigram and Hallatt, in support, cited *M'Intosh v. Great Western Railway Company*, 28 Law Jour. Ch. 169; *Russell on Arbitration*, pp. 442, 443. *Bacon and Glasse, contra.*

The Vice-Chancellor said, that Mr. Hawksley had neither pleaded nor demurred to the interrogatories, but merely contended that as they were irrelevant and immaterial, he was not bound to answer them. It was part of the plaintiff's case that the conclusion came to was inconsistent with truth and justice, and the data on which the conclusion proceeded were material, together with some further proof to show collusion. The exceptions would therefore be allowed.

Vice-Chancellor Knight, Esq.
Smith v. Carron. Nov. 23, 24, 26, 1849.

A purchaser of a lease of a piece of land, who had assigned the lease to a third party, and who had also assigned the lease to a fourth party, was held to be liable for the specific performance of a contract.

to take an assignment of the plaintiff's interest in a house in Great Ormond Street, which he held by assignment from the original lessee, Lord Montagu. It appeared that the original lease contained a covenant not to assign without a written license, which, when given, was not to be taken as a waiver of the restriction in regard to subsequent assignments. The original lease, with the assignment to the plaintiff indorsed, thereon had been produced for the defendant's inspection, and he had written a letter accepting the title. The defendant, nevertheless, refused to complete, on the ground that the covenant against assignment with a license was unusual, and that he did not know that it was in the lease. (*Hall v. Smith*, 14 Ves. 426; *Walter v. Mays*, 1 Jac. & W. 181; *Barraquid v. Archer*, 2 Sm. 43; 1 Sugd. Vend. & Purch., 2d ed. 303.)

The Solicitor General, and Schumberg, for the defendant. The Vice-Chancellor said the defendant had by his letter, accepting the title, by implication admitted that he had no objection to make thereto, and it was therefore unnecessary to enter on the question of constructive notice. The covenant in question was not an uncommon one, though perhaps not a usual covenant; and specific performance of the covenant would be decreed with a reference to inquire into the title.

Queen's Bench.
Rogers v. Inhabitants of Wigton, Nov. 17, 1897.

PAUPER.—SETTLEMENT.—ADMISSION BY A CLERK. Where the clerk of the clerk to the board of guardians of W. had by a letter stated that a pauper who was in another parish was settled in W., and requesting relief to be granted to him, and the board of guardians had been misled by the statement, it was held that the admission of the pauper to settlement in W. would bind the parish of W. if the statement had been obtained from the order of sessions, confirming an order of removal by the justices of the peace from the township of Laland to the township of Wigton, inasmuch as it appeared from the case that the opinion of this Court that the township of Laland had kept the pauper in their workhouse for 93 weeks after she had claimed relief as a pauper in W., that the clerk of the clerk to the Wigton board of guardians had written to the Laland board, stating that the pauper's settlement was in Wigton, and requesting relief to be given her on account of that township, and that the amount paid was subsequently paid to the township of Laland.

Referred to the clerk himself, who was recognized officer of the parish, and the channel of communication from the board to another and the board to the township of Laland.

settlement, in the latter was binding on the township of Wigton.
RULE DISCHARGED.
Queen's Bench Practice Court.

(Coram Mr. Justice Paterson.)
Markwell v. Dyson, Nov. 20, 21, 1897.
ATTACHMENT FOR CONTEMPT.—CLERK TO QUEEN'S PRISON.—FEES ON HABEAS CORPUS.

A rule nisi for an attachment for contempt was granted against the clerk to the Queen's prison, for refusing to receive a writ of habeas corpus ad satisfaciendum against a prisoner, without a fine of 9s. 4d. on the 1st action, and 2s. on each subsequent action, which was subsequently enlarged to give time to prepare the affidavits as to the exigency of the practice.

This was a motion for a rule nisi, on the clerk of the papers of the Queen's prison, for an attachment for contempt in refusing to receive a writ of habeas corpus ad satisfaciendum without the payment of certain fees, which he claimed. The writ was issued against a prisoner in the Queen's prison, and was presented to the clerk, who claimed 2l. 17s. 4d., under a table of fees sanctioned by the Lords of the Treasury, namely 9s. 4d. on the first action, and 2s. on every other action in which there were detainers. There were 24 other actions, and the fees thus amounted to 2l. 17s. 4d. The money was paid under protest.

Referred to the support of the rule, contended, that the fees were to be paid by prisoners and not by the plaintiff.

The Court granted a rule nisi, which was on the 20th November enlarged on the application of the Attorney General, upon the ground that it would require considerable research to prove the fees, which were of ancient date—the affidavits to be shown in the ordinary way, as if there had been no enlargement.

EDWARD AND MARY JEVONS, PLAINTIFFS, v. DAVID JEVONS, DEFENDANT.

The defendant guaranteed to pay a certain amount, in consideration that the plaintiff gave credit to Dr. J., and the credit which was to be paid to the plaintiff was to be guaranteed by the defendant.

DAVID JEVONS, being indebted to the plaintiffs, tobacco manufacturers, in 40l. for goods sold and delivered, at one month's credit, applied to have the credit extended to three months, which the plaintiffs agreed to, on consideration that the plaintiffs gave credit to David Jevons, to secure the payment thereof. The three months having expired, the plaintiffs brought this action on the guarantee.

Bozell in support of a special demurrer to the declaration, on the ground that the guarantee was uncertain and bad, the credit being applicable to a credit already given or *in futuro*.

Karslake contra.

The Court said, the words in the guarantee embraced either an existing, or a future credit, and the declaration proved that it applied to a future credit, and was therefore not ambiguous on the face of it. It was material, for the protection of the tradesmen acting on the faith of a guarantee, to sustain those instruments where in point of law they could be sustained. The declaration was therefore good, and judgment would be for the plaintiffs.

Nind v. Arthur. Nov. 5, 17, 1849.

BILL OF EXCEPTIONS.—JUDGE'S DEATH.—SEALING.

Semble, that a bill of exceptions to the ruling of a judge, tendered before, but not sealed at the time of the judge's death, cannot be sealed after that event, and the consent of the opposite party will not cure the defect.

Semble, (per Maule, J.) that on circuit the other judge in the commission might have sealed it.

THIS was a motion for a rule to refer the bill of exceptions tendered to the ruling of the late Mr. Justice Coltman, to another judge for sealing, or for a new trial. The action had been tried under a rule for a new trial before Mr. Justice Coltman, at the Middlesex sittings in January, 1849, and a verdict passed for the plaintiff with 150*l.* damages. The bill of exceptions was settled in March, and delivered to the plaintiff, who made several alterations, and delivered it back in June. The plaintiff then took out a summons, calling on the defendant to show cause why execution should not be issued, when the 14 days' time was given to the defendant. On July 11, Mr. Justice Coltman died, before sealing the exceptions.

Byles, S. L., in support, cited Newton v. Boodle, 3 C. B. 795.

The Court granted a rule nisi; on circuit, the other judge, who was included in the commission, might have sealed the bill of exceptions. But on the 17th, upon *Prentice*, for the plaintiff, consenting to the bill of exceptions, being settled by Mr. Justice Cresswell, who had tried the action once, and sealed by the Lord Chief Justice; the Court said, that notwithstanding such consent, the bill could not be sealed, but that the parties must either agree to a new trial or a special verdict. Rule discharged.

Court of Echequer.

Fullarton v. Vallack. Nov. 17, 1849.

SECURITY FOR COSTS.—PLAINTIFF ON BOARD MAN-OF-WAR.

Held; that a captain's steward on board one of her Majesty's ships, will not be required to give security for costs, although the ship is usually on foreign service.

THIS was a motion for a rule calling on the

plaintiff, a captain's steward on board one of her Majesty's ships of war, to give security for costs.

George Pollock, in support, contended that the plaintiff was usually resident abroad beyond the jurisdiction.

The Court said, that an Englishman is not *prima facie* liable to be called on to give security for costs unless under special circumstances, and the plaintiff does not lose his privilege because he is resident in one of her Majesty's ships. The rule was therefore refused.

Court of Bankruptcy.

(*Coram Mr. Commissioner Shepherd.*)

In re Webb. Nov. 20, 1849.

CERTIFICATE.—WHEN SUSPENDED BEFORE 12 & 13 VICT. C. 106.—NOT CLASSED.

Where a bankrupt's certificate had been suspended for 12 months under an order prior to the 12 & 13 Vict. c. 106, and the time expired after the passing of that act, held, that no class would be mentioned in the certificate.

THIS was an application on behalf of John Webb, of Luton, for his certificate. It appeared that it had been suspended for 12 months, and that the time had now expired.

Linklater, in support, contended, that as the consideration of the case took place prior to the passing of the 12 & 13 Vict. c. 106, no particular class should be mentioned in the certificate.

The Commissioner, after consulting with the other Commissioners, granted the certificate as asked.

Consistory Court.

In re Edwards, deceased. Nov. 29, 1849.

WILL AND CODICIL.—PROBATE.—EXECUTOR AND EXECUTRIX.—APPOINTMENT.

On motion, probate was refused to will and codicil where the codicil confirmed the former will, but referred to another previous will, as to the appointment of executrix and executrix, but leave was given to propound the papers.

THIS was a motion for probate of the will and codicil of the late Ann Edwards, of Shaftesbury Terrace, Pimlico. The testator had, by a will in 1842, appointed two parties executrix and executor, but by a later will, dated June, 1845, they were not named as such, and in a codicil of January, 1846, her former will was confirmed, and the appointment of the executrix and executor described as mentioned in a former will.

Haggard, L.L.D., in support of the motion.

The Court said, the codicil had reference to another will than the one of which probate was sought, and the facts were thereby involved. The motion must therefore be refused, with liberty to the parties to proceed in the ordinary course, by propounding the will.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Common Law.

[For the previous sections of this series of the Digest, in the present volume, see Jurisdiction of County Courts, p. 87. Poor Law and Magistrates' Cases, 108. Construction of Statutes, 128, 146. Principles and Jurisdiction, 165.]

APPEALS FROM REVISING BARRISTERS.

[The approach of the Session of Parliament induces us to lay before our readers the Decisions of the Court of Common Pleas upon these Appeals.]

APPEAL.

Time of entering.—Where an appeal was tendered within the first four days of the term, with a notice imperfectly signed, the Court refused to allow the appeal to be entered (the defect being cured) on the 5th day. *Petherbridge v. Ash*, 4 C. B. 74.

See *Consolidated Appeals*.

ASSIGNEE OF RENT-CHARGE.

The assignee of a rent-charge is not entitled to be registered, unless he has been in the actual receipt of it for six months before the last day of July. *Hayden v. Overseers of Twerton*, 4 C. B. 1.

Cases cited in the judgment: *Murray v. Thorniley*, 2 C. B. 217; 1 Lutw. Reg. Cas. 446.

BIRTH.

See *Freedom by Birth*.

CLAIM TO VOTE.

See *Notice of Claim*.

CONSOLIDATED APPEALS.

1. *Absence of Notice.*—The Court has no power to hear an appeal, where the respondent fails to appear, unless the appellant has served upon him a notice, under the 6 & 7 Vict. c. 18, s. 62, of his intention to prosecute the appeal, 10 days at least before the first day appointed by the Court for hearing appeals—that is, 10 clear days, exclusive both of the day of service and of the day so appointed. *Norton v. Town Clerk of Salisbury*, 4 C. B. 32.

Cases cited in the judgment: *Regina v. Justices of Salop*, 3 N. & P. 286; 6 Dowl. P. C. 28.

2. The Court will not postpone the hearing of an appeal, in order to afford time to give the necessary notice, upon a suggestion that the difficulty has arisen from the circumstances of their having appointed an unusually early day for the hearing of appeals; there having been ample time to give the notice between the day appointed and the day on which the decision of the revising barrister was pronounced. *Adey v. Hill*, 4 C. B. 38.

3. The decision of the revising barrister took place on the 16th of October. The appellant's

attorney was taken ill in the last week of that month, and died on the 7th of November: *Held*, that this was no excuse for the absence of the notice to the respondent required by section 62 of the 6 & 7 Vict. c. 18, and that the Court had no power, under section 64, to aid the appellant by postponing the hearing. *Pring v. Estcourt*, 4 C. B. 73.

4. *Dispensation.*—An application by the respondent for leave to deliver paper books after the proper time does not dispense with the notice required to be served upon him by the 6 & 7 Vict. c. 18, s. 62: *Grover v. Bonfems*, 4 C. B. 70.

5. *Signature by appellant.*—The notice of the appellant's intention to prosecute his appeal, under the 6 & 7 Vict. c. 18, s. 62, must be signed by the appellant himself; the signature of an agent will not suffice. *Petherbridge v. Ash*, 4 C. B. 74.

6. *Who named as appellant.*—*Quare*, whether a mere agent, not personally interested in the subject-matter of an appeal, can be named as appellant to prosecute a consolidated appeal. *Wanklyn v. Woollett*, 4 C. B. 86.

DELIVERY OF PAPER BOOKS.

By appellant for respondent.—The respondent having neglected to deliver paper books to the two junior judges, pursuant to the practice laid down in *Cooper v. Coates*, 5 M. & G. 98; 8 Scott, N. B. 68; 1 Lutw. Reg. Cas. 92, the appellant, who had duly delivered his own, prepared and tendered two other copies on 11th November, but the judges' clerks refused to receive them without the direction of the Court. On the 1st day appointed for hearing appeals, permission was obtained for the appellant to deliver the additional paper books. *Pring v. Estcourt*, 4 C. B. 73.

FREEDOM BY BIRTH.

The corporation of *M.* consists of four classes of burgesses or freemen:—1. Capital burgesses (in whom alone was the right of voting prior to the passing of the Reform Act); 2. Assistant burgesses; 3. Landholders; 4. Free burgesses or commoners. Vacancies in the 3rd class are supplied from the 4th by seniority, and in the other classes respectively by election: *Held*, that one who was a member of the 4th class, *by right of birth*, before the 1st of March, 1831, and became a "capital burgess" by election, after that day, is not disqualified as an elector by the 2 W. 4, c. 45, s. 32. *Gale v. Chubb*, 4 C. B. 41.

And see *Consolidated Appeals*, 4.

FREEDOM TENURE.

A. claimed to vote in respect of a burghage tenement in an ancient borough. The case found, that burghage tenements within the borough had always been conveyed by deed of grant, or bargain and sale, without livery of seisin, and without a lease for a year, or any

inrolment; that no surrender or admittance was required, nor was any fine paid upon descent or alienation; that the mode of descent was agreeable to the Common Law, except that females inherited, not as coparceners, but by survivorship; that the interest of a *feme covert* was passed without any separate examination of the wife; that the widow of a person dying seized of a burgage tenement had the whole sharing her estate viduit; that burgage tenements had always been devisable in the same way as ordinary freeholds; that they were held subject only to the payment of certain fixed annual rents payable to some individual; and that no other services had been performed or payments made in respect of them: *Held*, that in the absence of evidence on the face of the case to show that the freehold was in any other person, it must be assumed that A. had such a freehold tenure as to entitle him to be registered, the value being sufficient. *Busher v. Thompson*, 4 C. B. 48.

NOTICE OF CLAIM.

Service of notice.—*Amendment at the revision.*—A parish consisted of four divisions, popularly, but improperly, called townships. Four overseers were appointed for the whole parish, one being selected from among the inhabitants of each of the so-called townships. In making out the lists of county voters, the overseer who acted for each division made out a separate list, and each overseer published a separate notice under the 6 & 7 Vict. c. 18, s. 3, sched. (A.) No. 2, requiring persons entitled to vote in respect of property situate within his township to send in their claims to him. These notices were in each case signed by the particular overseer who acted for that division, and by the assistant overseer, who therewith styled themselves "overseers of the township of ————."

A notice of claim was directed to, and served upon, the overseer of the particular so-called township in which the qualifying property was situate. This notice having been objected to before the barrister at the revision, he corrected the mistake in the lists, under the power conferred upon him by section 40, and disallowed the objection.

Held, that the barrister had properly exercised his discretion, and that the notice was, under the circumstances, sufficient and well served. *Elliot v. Overseers of St. Mary Within*, *Carlisle*, 4 C. B. 76.

NOTICE OF OBJECTION.

1. *Description of objector.*—In a notice of objection under the 6 & 7 Vict. c. 18, s. 17, the objector was described as—"R. F., of the ———, on the list of voters for the borough of L." The register of voters for the borough of L. consists of four separate lists, viz., one of 101 householders for each of three townships comprised in it; and one of the freemen of the borough. The objector's name was on the last-mentioned list only: *Held*, that he was insufficiently described in the notice; and that

the inaccuracy of description was not cured by the 101st section: *Allen v. Greaves*, 4 C. B. 9.

2. *Notice of objection.*—The notice of objection under the 6 & 7 Vict. c. 18, s. 17, dated within the day and month, without the year, is insufficient: *Allen v. Greaves*, 4 C. B. 19.

3. *Service of notice.*—The list of voters was signed by three of the overseers and one of the churchwardens, and the service of the notice of objection was upon another churchwarden, who had not signed the list: *Held*, that the notice was well served. *Becken v. Hockin*, 4 C. B. 19.

4. A notice of objection, addressed to the voter at A., described as his place of abode in the borough, was left at his office in B. The office in B. was not the voter's place of abode, and he had no residence in B. (1)

The revising barrister decided that the notice had not been given so on as at the place of abode of the voter as stated in the list, within the meaning of the 6 & 7 Vict. c. 18, s. 17: *Held*, that his decision was correct. *Allen v. Greensill*, 4 C. B. 190.

5. *Place of abode.*—In a notice of objection, the place of abode of the objector was described as "The Oaks" (without the addition of any parish, township, or other district.) "on the register of voters for the parish of St. W." In the list of voters for the parish of St. W., the objector's place of abode was described as "St. W.," and his qualifying property as "The Oaks." *Held*, that the description was insufficient, and could not be aided by a reference to the list of voters; so as to show that the place called "The Oaks" was in the parish of St. W.; and that the objection was not removed by the finding of the revising barrister that the place referred to was in fact in the parish of St. W. *Walfelt v. Davis*, 4 C. B. 115.

See *Consolidated Appeals*.

OBJECTION TO VOTER.

See *Notice of Objection*.

PAPER BOOKS.

See *Delivery of*.

QUALIFICATION—ENTIRETY.

A. occupied a shop, which, together with a house and other premises, also occupied by him, constituted a sufficient qualification in point of value, but neither being sufficient alone. The shop was separated from the rest of the premises by a yard, in the exclusive occupation of A.; but there was no complete curtilage or fence surrounding the whole, the yard being approached by a passage to the side of the shop, open to the street, which was also the property of A., but used by the tenant of the adjoining house in common with him: *Held*, that the shop could not be joined with the other premises, so as to constitute sufficient qualification; under the statute 2 W. 4, c. 45, s. 87. *Powell v. Price*, 4 C. B. 105.

RENT-CHARGE.

See *Assignee of Rent-Charge*.

A party entitled, before the passing of the 2 Wm. 4, c. 45, to vote as an inhabitant householder paying rates and not, does not, by the 33rd section of that act, lose his qualification by having omitted for one year to pay his rates before the last day of July. *8 Nicks v. Field, 4 C. B. 62.*

Cited in the judgment in *Cullen v. Morris, 4 Smith N. R. C. 371.*

REVISING BARRISTER.

See Signature.

SERVICE OF NOTICE.

See Notices.

SIGNATURE OF REVISING BARRISTER.
1. Indorsement.—An appeal, tendered within the proper time, having been rejected by the officer because the indorsement had not been signed by the revising barrister, as required by the 6 & 7 Vict. c. 18, s. 42. The Court allowed it to be entered *de bene esse*, on the fifth day of the term, due diligence appearing to have been used to obtain the signature within the first four days. *Pring v. Esicourt, 4 C. B. 71.*
2. The indorsement of an appeal not having been signed by the revising barrister, until the fifth day of Michaelmas Term, the Court refused to allow the appellant to be heard. *Wanklyn v. Woollett, 4 C. B. 86.*

BUSINESS OF THE COURTS.

COMMON LAW CAUSE LISTS.

Queen's Bench.

Note Trials remaining undetermined at the end of the Sittings after Trinity Term, 1849.

Easter Term, 1849.

Kent.—Doe d. Warren and another v. Brydges, Brydges contra Sir F. Thesiger.

Hilary Term, 1849.

Middlesex.—Gudby v. Estall—Sir F. Thesiger.
Middlesex.—The Queen v. Smith and others—Sir F. Thesiger.

(Stands for arrangement.)

Middlesex.—Same v. Same—Cockburn.

(Stands for arrangement.)

Middlesex.—Osterman v. Bateman—Girdley.

Tried during Hilary Term, 1849.

Middlesex.—Arden v. Sullivan—Petersdorff.

Middlesex.—Doe d. Howe v. Thorston—Cox.

Easter Term, 1849.

Middlesex.—Colombine v. Pennell and another—Attorney-General.

Middlesex.—Guskill v. Stone—O'Malley.

Middlesex.—Margeson v. Wright—Chambers.

Middlesex.—Doe d. Harrison and others v. Glover—Chambers.

Middlesex.—Robins v. Tripp—Henton.

Middlesex.—Bass and others v. Wells—Martin.

Middlesex.—Chapman v. Speller—Humphrey.

Middlesex.—Wakeham v. Lindsey and others—Udall.

London.—Huntley v. Donnan—Chambers.

London.—Charmant v. Steere, Esq., sheriffs, &c.—Sergeant Shew.

London.—Essell, P. O. v. Lewis—W. H. Watson.

Here.—Doe d. Commissioners of Woods and Forests and others v. Ross—Brett.

Wilt.—Doe d. Lord Arundel and others v. Fowler—Greenwood.

Wilt.—The Queen v. Inhabitants of Cricklade—Gardner.

Devon.—Brown and another v. Coleridge, clerks and Grover.

Devon.—Doe v. another v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Devon.—Doe v. Same—Same.

Northampton.—Doe d. Hubbard v. Hubbard—Whitehurst.

Lincoln.—Allison v. Draper—Same.

Lincoln.—The Queen v. Betts and others—Same.

Lincoln.—Same v. Same—Humphrey.

Warwick.—Edwards v. Knowles—Whitehurst.

Cambridge.—Morton v. Tibbett—Worloge.

Durham.—Humphries v. Brogden, secretary, &c.—Knox.

York.—Livingtons, surviving partner, &c. v. Whiting—Pachley.

Liverpool.—Manchester, Sheffield, and Liverpool Railway Co. v. Blinkhorne—W. H. Watson.

Essex.—Doe d. Darenth v. Moffatt—Chambers.

Essex.—Leary v. Patrick and another—Same.

Essex.—Hurst v. Hurst—Sergeant Shew.

Essex.—Gates v. Goaden—Hawkins.

Essex.—Dimes v. Pettit—Sergeant Shew.

Essex.—Phillipps and others v. Evers and another—Sergeant Talfourd.

Essex.—Baker v. Baldwin—Same.

Essex.—Doe d. Sayer and others v. Mattok—Godson.

Essex.—Griffiths v. Marcy—Sergeant Talfourd.

Essex.—Williams and others v. James—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

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Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Essex.—Same v. Same—Same.

Liverpool.—Mallalieu v. Hodgson and another—Knowles.

Norfolk.—Nield v. Ratcliffe—O'Malley.

North.—Austin v. Spear, exor., &c.—Chambers.

Essex.—Baker v. Rusk—Chambers.

Kent.—Williams v. Lord Rensford—Chambers.

Kent.—Beagrow v. Russell—Chambers.

Surrey.—Delfosse v. Hollis—Hawkins.

Surrey.—Hounsfeld, clerk, v. Curtis—E. James.

Surrey.—Doe d. Constable v. Stevenson—Pensack.

Cheshire.—Whalley v. Bismwell—Walsby.

Dorset.—Bartlett v. Bullen—Cockburn.

Gloucester.—Tyacke v. Richards—Crowder.

Cornwall.—Same v. Same—Cockburn.

Somerset.—Doe d. Biddulph and others v. Hole and others—Cockburn.

Somerset.—Melhuish v. Collier—Crowder.

Stafford.—Smith v. Archibald and another—Keating.

Brecon.—Williams v. Morgan, in replein.—Evans.

Tried during Michaelmas Term, 1869.

Middlesex.—Halston v. Fennings—W. H. Watson.

ENLARGED RETURN.

Hilary Term, 1850.

First Day.

Doe d. Bridges v. Roe, for Bail Court.—Martin, G. R. Clarke's rule.

In the matter of a suit in County Court of Cornwall, between Thomas Newton and James Nancarrow, for Bail Court.—Graham v. M. Smith's rule.

In the matter of a suit, &c., between Edward Ashworth and Richard Shepherd and another, for Bail Court.—T. Jones, Martin's rule.

Lawrence and others v. Hughes—Martin, Sir F. Theobald's rule.

Marshall v. Dyson, sued, &c.—Attorney-General, Kean's rule.

Duff v. Chambers—Chambers, Sir F. Theobald's rule.

Doe d. Mays and another v. Cannell, for Bail Court.—Palmer, Couch's rule.

The Queen v. Justices of Huntingdonshire, for Bail Court.—Worlidge, W. H. Watson's rule.

The Queen v. Justices of Sutton, for Bail Court.—Phinn, Hodges.

The Queen v. James J. Harding—Keene, Sir F. Theobald's rule.

Second Day.

Daintree v. Harrell, for Bail Court.—Hawkins, Bevil's rule.

Hamilton v. Newton, for Bail Court.—Defendant in person, Rogers.

Rankin v. Hamilton—Crowder, W. H. Watson.

In re Lands' Clauses' Act, between Fairless and others, for Bail Court.—Temple, Addison.

Same, for Bail Court.—Same, Same.

The Queen v. William Davey—M. Smith, Collier.

Same v. Justices of Cambridgeshire—Hawkins, W. H. Watson.

Same v. London and North-Western Railway Company—Knowles, Sir J. Bayley.

SPECIAL CASES AND DISCREPANCIES.

Hilary Term, 1850.

Maples and Co.—Huntley and others v. Pinto and another, special case.

Ravenscroft—Houlden v. Smith, Esq., special case.

Whitaker.—Bunter and another v. Cresswell, exr., special case.

Dickson and O.—Whitmore and others, assignees, &c. v. Hale and another, dem.

Yallop.—Armitage v. Insole and another, dem.

Oliverson and Co.—Thompson, Esq., M.P., & Ingham, Esq., and another, dem.

Batten.—Batten and another, executors, &c. v. Batten and another, dem.

Nichols—Giblin v. Deen, dem.

Holcombe.—Tall v. Tull, dem.

Lacy and Co.—Chrip v. Atwell, dem.

Lyon and Co.—Wray v. Chapman and another, special case.

Clowes and Co.—Biddlestone and others v. Eastern Counties Railway Company, special case.

Raw.—Adams v. Andrews, dem.

Stroughill.—Stroughill v. Buck, dem.

White and Co.—Cook v. Field, dem.

Cox and S.—Knight and others v. Faith and another, special case.

Chaplin.—Toiler v. Attwood, special case.

Scadding and Son.—Tins and another, v. Donovan, dem.

Gill.—Meyer and another v. Cockburn, dem.

Sargent.—Morris v. Walker, dem.

Same.—Bennett and others v. Batten and others, dem.

Wathen and P.—Barnes and another v. Keene, dem.

Tilson and Co.—West Cornwall Railway Company v. Mowatt, special verdict.

Pittendreich.—Spaunton and another v. Wood and others, dem.

Bankart.—Passenger v. Meastam, dem.

Clarke.—Pollett (a pauper) v. Chesterton, dem.

Oliverson & Co.—The Queen v. Bishop of Exeter, dem.

Webb, defendant in person.—Boyce v. Webb, dem.

Lyle.—Simpson v. Simpson, dem.

Williamson and H.—Saunders and another v. Dobson and others, special case.

Johnson and Co.—Steer v. Bowerman, award.

Wiglesworth and Co.—Hutchinson v. North-Western Railway Company, dem.

Sherpe and Co.—Holmes and another v. Bromfield, dem.

Pemberton & Co.—Chabot v. Lord Morpeth and others, dem.

Clowes and Co.—Valpy and another, assignees, v. Oakeley, dem.

Watson.—Blackford v. Hill, dem.

Jaques and Co.—Burley, surviving executor, &c., v. Deben, surviving executor, &c., dem.

Gullaume.—Forster v. Hoggart and another, special case.

Crafter.—Chrip v. Atwell, dem.

Parkinson.—Keyse v. Powell, dem.

Blower and Co.—Rose v. Dry and another, in replevin, special case.

Bower and Son.—Parker v. Smith, dem.

Whitaker.—Davies v. Cary, dem.

Wilson.—Railton v. The York, Newcastle, and Berwick Railway Company, dem.

Rogers.—Wagstaffe v. Booth, administrator, &c., dem.

Jaques.—Berry v. Huxtable and another, dem.

Maples and Co.—Gallard v. Gilchrist, dem.

Roberts.—Scattergood v. Silvester, special case.

May and S.—Reynell and another v. Lane, dem.

Trinder & E.—Daniel v. Merton, special case.

Tilson & Co.—Walsh and another v. Tresson and wife and others, special case.

Leves.—Bainbridge v. Wade, dem.

Pinniger.—Pim v. Wilson, dem.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 12, 1850.

LAW EXPENDITURE OF RAILWAY COMPANIES.

SALARIED SOLICITORS.

FROM the returns recently made to parliament, it appears that the law expenses of railway companies are of a most startling and enormous amount. Indeed, long before these returns were ordered, the parliamentary charges of solicitors and agents had been the subject of remark both by the public and the profession, but they are now brought under one view; and a writer under the name of "Peter Isaac Macpherson," has just published a pamphlet with a view to the speedy and effectual reduction of the expenditure.*

The writer disclaims any intention of imputing improper motives to the solicitors who are at present employed for the railway companies, and we think that much may be said to account for a large part at least of the expenses under consideration. 1. The usual parliamentary charges of solicitors are well known to be double those of ordinary professional business. 2. The outlay in preparing for and conducting a bill through parliament is vastly out of proportion to the disbursements in proceedings in the Superior Courts. 3. Railway cases, from the enormous extent of the interests they involved and the rapidity with which they were required to be conducted, distanced all previous examples of private or local bills in parliament. 4. Large as have been the charges for the law business conducted by the Solicitor, the amount is small

when compared with the expenses which are strictly parliamentary.

The writer before us states, as the result of his analysis of the voluminous returns, that the law charges and parliamentary expenses of 127 railway companies are as follow:—

Law charges . . .	£1,234,948	14	10
Parliamentary expenses	3,303,460	19	8
Total	£4,538,409	14	6

This total, it appears, does not include several of the principal railways, and the author mentions the following:—

London and North-Western.

Law charges . . .	£143,477	1	6
Parliamentary expenses	714,051	1	10

Lancashire and Yorkshire.

Law charges . . .	£18,947	0	0
Parliamentary expenses	453,199	0	0

Manchester Sheffield and Lincolnshire.

Law charges . . .	£46,344	1	9
Parliamentary expenses	321,222	19	10

It is also stated that there are 60 other railways for which no returns have yet been made; and these seem to be most important, viz.—the Great Western, the London and South-Western, the Eastern Counties, the South Eastern, the Great Northern, the London and Brighton, and various others. The author estimates the grand total at not less than *ten millions*, and he then proceeds to point out the evils of the present course of law charges:—

"On the trial of a recent case, however, in the Court of Exchequer, it was proved that a Local Agent who had been appointed by the Chief Solicitor of a Railway Company in Staffordshire, had, on receiving his appointment, entered into an agreement, to share with his principal, the profits arising from all

* The Law Expenditure of Railway Companies, considered with a view to its speedy and effectual reduction. By Peter Isaac Macpherson. London: Baily, Brothers, Royal Exchange Buildings.

the law business to be transacted by that Agent on behalf of the Company. Lord Chief Barpy Pollock, having on this occasion, as indeed, might well have been expected, expressed his strong feeling of disapprobation at such an arrangement having been made between the Chief Solicitor, and the Local Agent of the Company, it was, to the great astonishment of all present in Court, stated by way of justification, that such an arrangement as this was, by no means a singular one, for that in fact it was one, that had been adopted and sanctioned, in nearly all the Railway Companies throughout the United Kingdom.

"Believing, as I do, from the inquiries which I have made on the subject, that the assertion thus made, if not literally accurate, is at any rate to a great extent founded on truth, I would ask whether there can be a stronger illustration of the present vicious law system of Railway Companies, than the simple fact, that such an abuse as that which has just been mentioned, should not merely be suffered to exist, but that it should be thus unblushingly avowed and justified.

"In the ordinary case of one Solicitor employing another Solicitor living at a distance for the transaction of some particular portion of a client's business, the Solicitor so employing the Agent, not only considers himself responsible for the selection thus made, and for the mode in which the work is done by him, but also feels himself bound to see, that no improper charge is made for the work performed. It is however obvious, that in the case of Railway Companies, these safeguards so necessary for the client's protection, are altogether wanting, where the appointment of the Agent may be made to depend not so much on the merits of the person to be employed, as upon the question of pecuniary interest to be secured to the Chief Solicitor of the Company by such an appointment, and where the principal Solicitor, instead of being a check upon the Local Agent, has a common interest with that Agent in increasing the charges of the latter as much as possible."

"In addition to the abuse which I have just mentioned, there is another evil to which I feel it right to advert; namely, that Railway Solicitors appear very generally, to have entertained the notion that the law business of Railway Companies ought, on account of the largeness of the capital embarked in them, to be paid at a much higher rate, than any other business of a similar kind, transacted by a Solicitor. This over-estimate of the value and importance of their services has, in my opinion, led to a corresponding excess of charge on the part of many of the Solicitors employed in Railway matters; and Railway Directors, from not having understood the subject, and without any blame on their part, have too often been led to pay the full amount of bills, which ought to have been paid at a greatly reduced amount. It is very true, that this evil has in some instances met with a salutary check, several of such bills, as I understand, having

on taxation, undergone considerable reduction; and, indeed, one of these, amounting to very little less than nineteen thousand pounds, having lately, as I have been credibly informed, been reduced nearly 50 per cent. The evil, however, in my opinion, still exists to a serious extent, and it will, I fear, under the present ruinous system, always have a tendency rather to increase than diminish."

We think the learned writer loses sight, in some degree, of the well-known claim of a solicitor to a larger proportion of charge in parliamentary than in other matters, on account, as well of their importance and difficulty, as of the larger responsibility and the urgency of that class of business. It is also obvious to remark, in regard to the participation of the chief solicitor in the profits of the local agent, that the practice resembles that which has been long sanctioned by all the Courts, in the arrangements between attorneys and agents.

The author then enters upon the consideration of the remedy to be applied in removing the evils and abuses which he has set forth, and his views are thus stated:—

"I would advise each of the Companies now established on a permanent basis, in the first place to get rid at once and entirely of the numerous body of Local Agents at present in their employment; the only effect of whose interference in their legal concerns has been, to create a constant drain on the resources of the Company. In the next place, to select out of their numerous staff of Lawyers some one person, on whom they can implicitly rely, to be their sole Solicitor, with the entire control over and supervision of the whole of the law concerns of the Company; the law affairs of the Company being carried on at one office, and not as now distributed over the whole face of the country, and the Solicitor to be appointed, having under him such a number of clerks and assistants, as the magnitude of the Company's concerns may appear to render necessary. That the Solicitor to be thus appointed should be placed on the footing of a salaried officer of the Company, in the same manner as is at present the case with the Secretary, and should, for his salary devote his time and labour exclusively to the service of the Company. With regard to the salary of such Solicitor, I would suggest that it should be put on such a scale of liberality, as would insure the services of a person of the highest character and attainments in the profession; and once it was decided this plan were to be adopted, the Solicitor at the head of the law affairs of the Railway Company would, not only have a proper control over all the law concerns of the Company, which, under the present system cannot, in my opinion, be said to exist at all, but what is still more important, he would have the greatest possible interest in diminishing the amount of the law charges, and in increasing the law business, and

I am much mistaken if the result of this change would not be that the law business of the Railway Companies would be far more efficiently conducted, and a very large expenditure mutually saved, which is now wasted in law, and which might then be made available for the payment of dividends.

The plan which I have thus proposed, is not by any means a new one, nor one that is unique, as to its result. All the law business of the Government departments were in former times conducted by Solicitors, who made out bills of costs for the work which they performed. Now, however, nearly all these departments have salaried Solicitors, and I believe the result of the change has in every instance been found to be, that the business has been done much more efficiently, and at a great diminution of cost to the public. Nor, indeed, has this plan been adopted by the Government departments only. It has also been tried by more than one Railway Company, and, so far as I can learn, with a similarly successful result.

We quite agree that the chief solicitor, or one of his partners, should conduct the business before the two Houses, without employing a parliamentary agent who is not a solicitor. The author says:—

"I understand that it is the practice of the salaried Solicitors of the Government departments, not to employ any Parliamentary Agents under them in the proceedings in Parliament relating to their several departments. At all events, it would be part of any plan, that what is now done and charged for, and, as I think, needlessly done and charged for, by the Parliamentary Agent, should be part of the duty of the salaried Solicitor of the Railway Company, by which it is obvious that a very considerable saving in the Company's law expenditure would be effected."

With regard to the proposition of remunerating the solicitors of railway companies by salaries instead of fees, there appears little doubt that an attempt will be made by some of the shareholders who are dissatisfied with the reduction of their dividends, to effect a saving by placing their legal advisers upon a cheaper footing. The solicitors, not only of railways, but of all other extensive companies, will do well to take the subject into early consideration. If the measure be carried in railway companies, it will soon be extended to insurance, canal, and gas companies, and all other establishments of considerable magnitude. At first the salary and the allowance for clerks and expenses may be liberal, but amidst the conflicting interests of directors and shareholders, and the competition amongst solicitors, the emoluments may be gradually reduced until none but inferior members in

the profession will undertake the office. Whilst an honourable man, remunerated by a liberal salary, may be relied upon for the efficient discharge of his duty, it is to be feared that when a less respectable class of practitioners are employed, the labour will be proportioned to the emoluments, and ultimately the companies will suffer in some of their most important interests by the dangerous partiality of the time for cheap law.

On the other hand, "Mr. Peter Macpherson" contends, that if a salaried solicitor be not appointed, then all the bills of costs should undergo a regular taxation; and he thus argues that point—

"In administering the estate of a bankrupt, no Solicitor's bill of costs for business done in relation to that estate can be paid out of such estate, until it has been first submitted to and allowed by the Taxing Officer of the Court of Commissioners."

"In the administration of lunatics' estates, no bill of costs claimed to be due to a Solicitor, affecting that estate, can be paid without being first taxed, and the amount of it certified by the Taxing Master of the Court of Chancery."

"In estate acts, passed for the administration of large trust estates, nothing is now more common than for the legislature to introduce a clause providing that the costs of obtaining the act, as well as the subsequent costs of all business to be transacted by the Solicitor for the Trustees appointed under the act, shall be submitted to and taxed by the Taxing Master of the Court of Chancery; and no Trustee, under such an act, would be justified in the payment of his Solicitor's bill of charges for any such business, until it had first undergone such an ordeal."

"If, however, provisions have been made to prevent the payment of bills of costs, without taxation, in the cases to which I have just referred, how much the more strongly is such a provision necessary, in the cases of Railway Solicitors' bills, which are generally so much larger in amount than ordinary bills of costs, and into which, from the very nature of the transactions involved in them, excessive or improper charges are so much more likely to be introduced."

On this proposition it is sufficient to say, that under the Attorneys' and Solicitors' Act, all these railway costs may be taxed, not merely at the instance of the directors, but under a resolution of the shareholders at their usual meetings.

There is still a third plan for satisfying the minds of the proprietors that the directors have done their duty in investigating the law accounts by referring them to a legal auditor; and to this we think there can be no objection. It is said, however,

that there is considerable difficulty in choosing a proper person,—one who is well acquainted from actual experience with professional charges, and yet is above suspicion. He must either be an eminent solicitor or a taxing officer. We should incline to recommend such of the government solicitors as have actually practised as attorneys and solicitors. At first sight, there does not appear to be any objection to the Taxing Masters being employed as legal auditors, but the present writer enters the following protest against that course:—

“I have excluded from such an appointment every person holding office as Taxing Master, because it is obvious that such a person could not, without the greatest impropriety, undertake any such extra-official duty as that which I have mentioned, even if his services were gratuitously rendered, still less if those services were made the subject of private emolument and bargain. I entertain no doubt, however, that, from the body of Solicitors at present practising in London, persons fully competent to the duties which I have thus assigned to them, might, without much difficulty, be selected, though, in making selection of such persons, the utmost caution will be necessary.”

JOINT-STOCK COMPANIES' REGISTRATION ACT.

REGISTRAR'S CERTIFICATE.

THE interference of the legislature in matters of private enterprise, unless it be effectual, is almost always injurious. When schemes are proceeded with, apparently under the sanction of an act of parliament, ordinary caution is discouraged and confidence engendered for which there is occasionally a very insufficient foundation. It would be difficult to calculate how many well-intentioned persons may have been deluded and suffered by bubble companies started since the 1st November, 1844, and pompously announced as “provisionally registered under the act 7 & 8 Vict. c. 110.” Not one of every hundred persons connected with such companies was probably aware that, by provisionally registering a joint-stock company under the act, nothing more is meant than taking to the Registration Office in Serjeants' Inn, a paper containing the proposed name and purpose of the intended company, and the names and occupations of one or more of its promoters, and paying a fee of 5*l.* for a certificate of provisional registration. One of the main objects of the Registration Act was to invest companies completely registered with the qualities and

incidents of corporations, but it would seem that complete registration affords no security, either to shareholders or to the public, that the deed of settlement contains the prescribed provisions, or that the purposes or objects of the company are legal. The 7th section of the act provides, that no joint-stock company shall be entitled to receive a certificate of complete registration, unless it be constituted by a deed of settlement containing certain specified covenants and provisions, approved by the Registrar of Joint-Stock Companies. That portion of the 7th section which relates to the registration of the deed of settlement has given rise to considerable doubt and created much misapprehension; it is in these terms:—

“That on the production of such deed setting forth such matters and making such provisions as are hereby required to be provided for, and being so signed and certified, together with a complete abstract or index thereof to be previously approved by the registrar of joint-stock companies, and also a copy of such deed for the purpose of registering the same, or as soon after such production as conveniently may be, the registrar of joint-stock companies shall grant a certificate of complete registration, according to the provisions of this act in that behalf.”

The first question which arose upon the terms of this section was, whether it was the deed or the abstract the registrar was to approve of? but the received opinion and the practice of the registration office is, that it is the deed itself which has to be approved of. The duty of the registrar, it is conceived, is to examine the deed to see that it is in conformity with this act of parliament. The sense in which the word “approved,” in the section above cited, is understood, and the effect of such approval, has been recently the subject of parliamentary investigation as well as of judicial decision. Mr. F. Whitmarsh, the Registrar of Joint-Stock Companies, and who, before his appointment to that office, practised for many years at the Bar, was examined before a Select Committee of the House of Commons during the last Session, on the project successively known as the “Chartist Co-operative Land Company,” the “National Co-operative Land Company,” and ultimately the “National Land Company;” and his apprehension of the sense in which the word approval is to be taken is thus stated:—

“See Minutes of Evidence, ordered to be printed by the House of Commons, 9 June, 1848.

"It is an approval of the deed in the same way that a conveyancer would look over a deed to see that it is a properly drawn deed. The act of parliament did not immediately contemplate the approval of the deed in the previous instance, but it contemplated before the deed was registered, the registrar was to approve of it. It was considered that it would be a great inconvenience and a loss to the parties, to have a deed engrossed, which, when the registrar came to look at it, he might find to be an incomplete deed, and such as would require to be re-executed. It was therefore adopted as a rule in the office, that a draft deed and a draft abstract should be left for the perusal of the registrar, who, if he saw any occasion to make any alteration in it, did so or wrote in the margin the other provisions to be inserted, and it is signed in the usual way. I request that this deed may be revised and sent to me again for approval."

It does not appear, however, that the registrar considers he has any power to call for extrinsic evidence as to the nature or objects of the proposed company, or that it is incumbent upon him to do anything more than look at the face of the deed produced before him, and as it appears from the case in the Common Pleas hereafter referred to, this inspection does not afford any satisfactory assurance that the deed is framed in accordance with the act of parliament. In the course of the inquiry before the Select Committee, in answer to the question, whether he considered it his duty to inquire into either the propriety or the legality of the company, the registrar said:—

"To a certain extent I feel that I am bound to see to the legality of it, because the act of parliament says, that I am to approve of the deed, and it says, that I shall not grant a certificate of complete registration unless I am satisfied of the propriety of the deed, according to the terms of the act of parliament."

Having stated in a subsequent part of his examination, however, that the company in question had illegally purchased estates, and that many penalties had been incurred by the promoters, but that the draft deed of settlement left the office as approved, the registrar is thus interrogated by one of the members of the Committee:—

"Bringing the deed for complete registration under your notice, should it appear upon the face of the transaction, that the promoters have been acting contrary to law, do you consider that a reason why you should refuse the certificate?—No, I do not think I can do so."

"You do not consider it within your duty to call the notice of the Attorney-General to the fact, that he may put the law in force against the parties who have broken it?—No, it never has been so."

"Under an act of parliament restricting prosecutions of a certain character to the Attorney-General, would it not be natural that you, being the officer of the government, should call the attention of the Attorney-General to the facts?—It has never been done. I believe a representation was made upon the subject some time ago, before I was in office, and it was considered seriously whether some examples should be made in certain cases, but it went off, and that is all I have been able to learn. Finding some difficulties in the way of its being done, I did not of course feel it necessary for me to take any steps."

The unsatisfactory state of the law, as respects speculative companies, is stated by Mr. Whitmarsh in language the most forcible and remarkable. He says, "I see so much mischief arising out of these things; I see such speculations going on in some companies; that it almost makes one's hair stand on end at the tricks that are played;" and in another portion of his evidence he suggests that "the act might be extremely improved, if the registrar were required, as a matter of duty, to call upon people to comply with the terms of the act in many points, or to apply to the Attorney-General for his authority to compel the parties to register or to pay the penalties if they did not."

As above intimated, the effect of a certificate of complete registration under the act, and the duty of the registrar in respect of granting or refusing such certificate, was the subject of much discussion and of judicial decision, in a case of *The Bank of Iron Company v. Barnett*,¹ argued in the Court of Common Pleas during the last Michaelmas Term. The action was in debt against a shareholder for calls, to which the defendant pleaded, that the deed of settlement did not contain provisions fixing the number and qualification of directors, the times when instalments were to be paid, and other particulars, as required by the act; and that although a certificate of complete registration was granted upon the production of a deed not containing such provisions, the company never was completely registered. To this plea there was a demurrer, and the question raised by it, as afterwards stated by the Court, was, whether by reason of the omission from the deed of some of the provisions prescribed by the act, the certificate granted by the registrar was invalid, and amounted to no more than if it had been granted by a stranger?

¹ See printed evidence contained in the First Report on the National Land Company, p. 9.
² Reported 19 Law Jour. N.S. C. P., p. 17.

The Court, after a lengthened discussion, determined, that the facts stated in the pleas did not prevent the company from acting as a corporation, and that between the parties to this action, i. e. the company and a shareholder who had signed the deed, the certificate was conclusive, though, as significantly observed by Mr Justice Maule, "it does not follow that such a certificate is binding upon everybody." The grounds upon which the Court came to this conclusion are concisely stated in the judgment of Mr Justice Williams, which was in these terms:—

The statute, 8 & 9 Vict. c. 110, appears to be defectively drawn, in not providing what is to be done when a deed is registered and a certificate granted by the registrar, which deed, like that now before us, does not contain the requisite provisions set forth in schedule (A), and we cannot decide the question either way without incurring certain difficulties. I think it the correct view, and certainly the best, to decide that a certificate of complete registration under sections 7, 8, 9, and 25, respectively, is not altogether null and void (as argued by the defendant's counsel) if the deed does not contain all the provisions required by schedule (A). To hold otherwise, if pursued into its remote consequences, would render it impossible to carry the act into operation, and I think we must consider this among that class of cases where the maxim applies, *quod fieri non debet factum habetur*.

Considering the number of Joint Stock Companies now in existence, the facility with which they are created, and the important influence exercised by them, in the various transactions of life, the evidence of the public officers having peculiar opportunities of observing the manner in which the system works, is entitled to serious attention; whilst the avowedly defective state of the law is rendered apparent by the decision in *The Banwen Iron Company v. Barnett*. It is now manifest that the act 7 & 8 Vict. c. 111, amended by the subsequent Act 10 & 11 Vict. c. 78, has not fulfilled its objects, and that legislative interference is again required.

JOINT-STOCK COMPANIES' WINDING-UP ACTS

the es, and called a ~~white~~ bill of rose bank.

RESOLUTIONS OF THE MASTERS. The annual meeting of the association was held at the Hotel Hamilton, New York, on the 27th of January, 1890, and was attended by 37 members. The following resolutions were adopted:

That every contributor to an alleged infringing territory, by whose officers, agents, or servants, the goods of the association are sold, be required to furnish a statement, specifying the number of packages, and the names of the contributors, to the Fair Copy Bills of Costs Book.

company of which he shall allege or admit himself to be the proprietor or holder.

2. That to the proposal of sureties for any official manager, an affidavit shall be made stating whether he is surety in any other matter under the Winding-up Acts, and if so, in what other matters, and to what amount, in each matter, and for whom, and deposing that he can justify in the amount then required of him, and in an amount sufficient to cover his just debts and all liabilities in such matters.

3. That whereas it is the duty of the official manager himself to obtain possession of the books and papers of the company—to make out and lay before the Master the list of contributors—to prepare, send, and serve all notices to contributors or alleged contributors and other persons—to prepare and cause to be inserted all advertisements—to examine, investigate, and make out the accounts of the company and of the members and contributors respectively—to communicate with the contributors and with the debtors and creditors of the company—to get in, realize, and receive the property and assets of the company and the calls from time to time ordered by the Master to be paid by the contributors—and to ascertain and discharge the debts and liabilities of the company: no costs shall be allowed to any solicitor of the official manager for or in respect of any such matters, unless the Master shall either have given his previous sanction to the official manager to employ a solicitor in respect thereof or shall be subsequently satisfied that there are special grounds to justify such employment in each particular case: Provided always, that this regulation shall not necessarily apply to such costs incurred previously to the 1st day of January, 1850, as the Master shall think reasonable.

4. That no costs or expenses shall be allowed for or in respect of any journey made by the official manager, or by any person employed by him to a greater distance than 20 miles from the General Post Office, London, unless the Masters shall have previously authorized such journey; and as to any journey within 20 miles, the Master shall determine whether any and what costs and expenses shall be allowed in respect thereof.

5. That in all cases in which costs shall be allowed and directed by the Master to be taxed, such costs shall be taxed as between party and party unless the Master shall, under special circumstances, direct the same to be taxed upon any different principle. And in the taxation of costs, the principles of payment by hourly statements to the Master shall be disregarded, and the costs shall be assessed, and in cases where the Master is attended by counsel, the fees to such counsel shall be regulated upon the same principle as if the party seeking redress were before and of the Court in person; and with respect to the costs of the solicitor for the official manager, the Master may give any special direction relating thereto as he may think just.

shall not act as solicitor for any other party whatsoever, in any contest between such party and the official manager.

8. That nothing in these regulations contained shall be construed to limit or affect the power of the Master to award a single sum or fee for any costs awarded by him, or otherwise to settle the principle and the scale of the fees upon or according to which such costs in each case shall be ascertained and settled, or any other power vested in the Master.

Signed by all the Masters.

ARRANGEMENT OF BUSINESS IN THE COUNTY COURTS.

TOWNSHIP.

ARRANGEMENTS have been made for the

JANUARY.

York (County Court) Tuesday 8, at 10 a.m.
York (County Court) Wednesday 9, at 10
Selby Thursday 10, at 10
Whitby Saturday 12, at 10½
Whitby Monday 14, at 10½
Easingwold Tuesday 15, at 10
Richmond Wednesday 16, at 10
Richmond Thursday 17, at 10
Leyburn Friday 18, at 10
Stokesley Saturday 19, at 10
Northallerton Monday 21, at 10
Ripon Tuesday 22, at 10
Ripon Wednesday 23, at 10
Thirsk Thursday 24, at 10
Thirsk Friday 25, at 10
Knaresborough Saturday 26, at 10
Knaresborough Sunday 27, at 10
York (Assizes) Friday 11, at 10
Boston

FEBRUARY.

Tuesday 5, at 10
Wednesday 6, at 10
Thursday 7, at 10
Friday 8, at 10½
Saturday 9, at 10½
Monday 11, at 10½
Tuesday 12, at 10
Wednesday 13, at 10
Thursday 14, at 10
Friday 15, at 10
Saturday 16, at 10
Monday 18, at 10
Tuesday 19, at 10
Wednesday 20, at 10
Thursday 21, at 10
Friday 22, at 10
Saturday 23, at 10
Monday 25, at 10

MARCH.

Tuesday 5, at 10
Wednesday 6, at 10
Thursday 7, at 10
Friday 8, at 10½
Saturday 9, at 10½
Monday 11, at 10½
Tuesday 12, at 10
Wednesday 13, at 10
Thursday 14, at 10
Friday 15, at 10
Saturday 16, at 10
Monday 18, at 10
Tuesday 19, at 10
Wednesday 20, at 10
Thursday 21, at 10
Friday 22, at 10
Saturday 23, at 10
Monday 25, at 10

The following Rules for the regulation of the practice of the Court have been made by the judges:

1. The Court will not hereafter sit before 10 o'clock in the morning.

2. No case where the defendant resides out of the district of the Court, will be heard before 10 o'clock, (without consent).

3. No case will be commenced after half past four o'clock in the afternoon, (except under special circumstances).

4. The case of an opposed insolvency will be taken before 11 o'clock, (without consent).

SOLICITORS' ACCOUNTS.

PLAN OF BOOK-KEEPING.
To the Editor of the Legal Observer.

SIR,—I trust I may be pardoned if I respectfully venture as a Solicitors' Accountant of 46 years' standing, to explain the requirements and views of the profession on the subject of book-keeping. To begin with first principles, it is the giving and taking credit that requires books to be kept, and all the transactions, whether for ready money, or a cash book alone would suffice, and it is the nature of solicitors' accounts in particular, to require, to be kept, and take credit, then books are required; it remains therefore to be seen what these books are, and the best way to keep them. The first transaction of a solicitor

is, perhaps, an attendance or writing a letter on business for a client; to record this he must have a book in which to enter that and similar transactions; this book is almost universally kept by the profession, and is called the *Day-book*, and as the above transactions are entered therein in the order in which they occur, they require to be drafted out under different heads; this then requires another book also used in most offices, and called a *draft bills of costs book*; some offices draft the costs out on loose sheets, but it is both slovenly and insecure, as a bill of costs may be thus lost or mislaid; and there is this difference in the expense; it is also convenient, and the plan is generally adopted of having another book in which to take copy these bills, for convenience sake, for reference, and in case a signed bill is required; this book is called the *Fair Copy Bills of Costs Book*.

When any particular business is completed and the bill of costs drawn out, settled, cast-up, and the total ascertained, and the amount then and there received, another book is required in which to enter the money, viz., a *Cash-book*, which all agree to be indispensable; but if the bill of costs be not received at the time, it must be entered in another book called the *Ledger*, where each client, whose transactions require it, can have a page to himself, in which are collected together on one side (the left or debit side) all the amounts for which the solicitor gives the client credit, and on the other side (the right or credit side) all the sums for which the solicitor receives credit, the balance or difference between the two sides is the amount due to or from the solicitor and his client. All this is clear and is understood by nearly all the profession; but it is when the lapse of time, a death, a dissolution of partnership, or other cause, requires all accounts to be closed, that difficulties arise; these difficulties are,—the bills of costs are not all made out, and if made out, are not brought to their proper places in the *Cash-book* or *Ledger*, or the *Cash-book* has not been regularly kept and posted, and consequently few accounts in the ledger properly closed and balanced. It is thus most difficult, after a lapse of time, from one or other or all of these causes occurring, with most firms, to show the correct balances, the profits of the concern, or the particular share of each partner, &c., &c.; and to this end, more or less, most firms come, unless at the outset all these receipts and payments, givings and takings of credit, are regularly entered and posted to proper accounts at the time, and an occasional or periodical and accurate balancing, or “stock-taking,” takes place.

As a class, solicitors are proverbially bad accountants, and have neither time nor inclination to become otherwise; their demand is always for a simple system of book-keeping. It has therefore been the aim of every one who has written works or articles on this subject to endeavour to supply the demand by devising some scheme to meet the peculiarities of the case. Nearly all who have published works have produced thick cumbersome volumes; here is a difficulty at the outset,—few solicitors can or will wade through a book on accounts. Some of these authors may have produced what they call a simple system, but it is simple only in another sense of the word; for although they do very well, and indeed appear to be only designed for the beginning of a profession or where the transactions are few, yet when these transactions accumulate, as is the tendency of every business, be it small or large, the simple system becomes gradually inadequate for its duty, and is swamped in the mass of items. A professional accountant has, perhaps, then to be called in at great expense; or what is worse, hundreds, nay thousands, (I have known several instances of the latter,) are lost, which a periodical and accurate balancing of the books would either have prevented or mitigated. Other works show a

correct mode of balancing, but by too cumbersome a method. Nearly all the works, therefore, that have hitherto been published have failed to alleviate the necessities of the case, and the profession are left in the dark, as before.

A solicitor should, therefore, have not only a simple or easy system, but one that is both easy to keep and easy to balance,—the latter to be a *sine qua non*; but here lies the real difficulty—one never yet solved, and one that never will be to the entire satisfaction of all the profession. I have, therefore, attempted in some measure to meet this difficulty by my plan. All is there seen at a view; by it the tabular system is recommended as one founded on philosophical principles, and which is as near to truth and simplicity as a method of accounts can be brought. It will be perceived that each item is balanced by a similar amount in one or more of the columns on the other side of the treble red line in the centre of the cash journal, so that each transaction is balanced and the *double entry* completed at the time of the entry. The columns A, B, and C, on each side, cannot be increased in number without such increase being a branch of the other columns,—(to wit the “bank” column is obviously a branch of the client’s column.)—for the columns A. A. show your position with the world; the columns B. B. your position with your profession; and the columns C. C. your position with yourself. No other information can be either given or required, as no transaction can possibly take place that will not occupy one or other of these columns. The totals of these columns, therefore, whenever cast up,—daily, weekly, monthly, &c., will always show the position of the concern, be it large or small, as far as the facts are inserted in the book. In partnerships, accounts drawn out by the partners must go into the clients’ column, for the obvious reason that a partner is as much a debtor as a stranger for what he draws out. A solicitor may or may not adopt the expenses book and costs index,—he may draft his bills on loose sheets or in a book, and may fair copy them or not; all these are of secondary importance; but what I seek and what I urge and insist upon is, a method, be it mine or other people’s, by which a balance sheet is either self-formed, or that by some other means the solicitor is induced to act like every prudent tradesman and make a periodical and accurate balance sheet, or in other words, regularly to *take stock*.

GEO. JAS. KAIN, Accountant.

Bennett’s Hill, Birmingham.

TRANSFER OF MORTGAGE STAMPS.

MR. HOBSON.—In the new edition of *Tilley on the Stamp Laws*, (p. 483.) it is stated to be a consequence of the two judgments in *Hamblestone v. Jones* and *Doe v. Gutteridge*, or rather of the judgment in the former of those cases, that in every case of a transfer of mortgage, in

which is contained a covenant by the mortgagor, or by any other person, for payment to the transferee of the money already charged thereon, there must be a stamp duty of £. 15s. paid, besides the *ad valorem* duty on the further sum advanced, where there is any, or besides the transfer stamp of £. 15s., where there is no further advance, &c.

Now, I would venture to doubt the correctness of that proposition, with reference to the concurrence of an *original mortgagor*, on two grounds:—

1st. On the ground that in neither of those cases did the precise point arise; and

2ndly. On the ground that such a construction could not have been in the contemplation of the legislature in passing the 55 Geo. 3, c. 84, whereby a single stamp of £. 15s. only was imposed upon "any transfer of any mortgage, in which transfer the person who originally made the mortgage and continued entitled to the equity of redemption should be made a party, provided no further money, &c., should be added to the principal already secured."

It may indeed be said, that to be a *party to a deed is one thing*, and to enter into a *fresh covenant* for payment is *another*, but was ever a mortgagor made a party, without at least confirming the mortgage; and so making a further assurance? I will venture to say—never! Nor could such an idea have even entered into the head of the framer of that statute, or the heads of the legislators, by whom it was enacted.

And I would venture to add, that even the addition, by the original mortgagor, of a power of sale or any other device, provided that it apply only to the same estate, or quantity of interest, as was comprised in the original mortgage, would not render an additional stamp necessary.

The estate originally charged by the mortgage, and the general lien of the covenant, constitute in fact the *security*; and the variation of the covenant, and the addition of a power of sale, ought, I conceive, to be considered merely as *modifications of that security*.

And I submit that the above conclusion is fortified by the distinction made in the clauses of exemptions from *ad valorem* duty between "any deed for the *further assurance only* of any estate already in mortgage," &c., and "any deed made as an additional or *further security* for any sum already secured," &c., coupled with the above-mentioned provision respecting transfers.

M. W.

RUMOURED EXTENSION OF THE COUNTY COURTS.

To the Editor of the *Loyal Observer*.

SIR,—I am glad to perceive by your able observations in your number of the 24th ult, that you continue to advocate the preservation of the jurisdiction of the Superior Courts, and the diminishing the expense of the suitors thereof; and which I have long zealously, though humbly, also advocated, because it is

the course which I do still sincerely and honestly believe to be the best and wisest to pursue, and that which will ultimately prove the most safe and satisfactory as well to the public as the profession.

I apprehend the best and most effectual way to lessen litigation and save useless trouble and expense, is to render the law uniform and certain, and that those necessary attributes are by far most pure and perfect in the Superior Courts. Indeed the firmest friends of such extension freely admit the necessity of an appeal to the Courts at Westminster, in order to preserve some semblance of similarity between the judgments of the Superior and Inferior Courts, and consequently the extension of the writ of trial, (from the Superior Tribunals,) with the reduced scale of costs applicable thereto, is, I conceive, the course which ought to be adopted, instead of extending the jurisdiction of the County Courts with a power of appeal and an increase of the costs, which would cause a waste both of time and expense, because many people would appeal merely for the sake of delay, if the appeal were free and unfettered; and if not so, there will be in many cases a denial of justice. In short, the want of an easy power of appeal is already much complained of. Such writs of trial might be directed to the judges of the new Courts.

50*l*, or even 15*l*., frequently constitute almost the entire property of many poor persons, and therefore they ought to have the option of suing in the Superior Courts for their small debts as freely as the rich man for his large demands, and likewise the lame, the blind, the aged, and the timid, so as to have their legal claims enforced without being liable to be dragged away from their bed or their business to attend a County Court. All the Courts of justice being alike for the benefit of the people, they ought consequently to have the use of the Superior Tribunals for all demands beyond 5*l*. without restriction, as well as the Inferior Courts, especially now that the Palace Court is closed.

Again, the principle of permitting the suitors in the County Courts to be their own witnesses is decidedly dangerous, as I have shown in a paper which you did me the favour to insert in your number of the 9th of June last, to say nothing of the anomaly and inconsistency of having two opposite and contradictory systems of procedure under the same sphere of jurisprudence. Surely, the less interest a witness has in the result of the suit the better: our ancestors were, I think, justly tenacious of his having none—and I fear the morals of the people have not improved in proportion to their increased levy of charges and innovation. An Englishman's home, it is said, is his castle, but I much doubt whether the castle or its owner is sufficiently fortified by such a law when used by unprincipled persons; for the result of a summary suit, generally without a jury, to be dependent upon the plaintiff's own verbal testimony, seems to me to be in many cases something like a mockery of justice. One

of the common complaints of the old Courts of Request by each of the parties used to be, that the other would swear anything. And, therefore, if such a vicious system must be tolerated at all, it ought to be confined to matters of almost the smallest value. However, if the public be really desirous to have cheap law, let it be as pure as possible, and therefore remove the embargo on the article in the Superior Courts, *ultra 5l.* at most, and reduce the price of it therein so as to correspond as nearly as possible with the costs of the County Courts.

By a sketch of two bills, in a paper you were good enough to insert on the 27th Nov., 1847, I showed that the costs of a judgment by default in a common town action might be reduced to 50s., and of a verdict by writ of trial (minus the expense of witnesses, which is common to all Courts,) to less than double that sum, and which by consolidating and allowing one fee for two or more attendances, (as in the Insolvent Debtors' Court, and the Superior Courts also in some respects,) might be still further reduced, without disturbing the present machinery.

The alterations above-mentioned would, I am persuaded, not only not injure the new Courts, but on the contrary render them more popular and more respected, without which they must fall into contempt and dislike, as was, I believe, once before the fate of County Courts in this country. VINDEX.

LAW SOCIETY OF IRELAND:

ANNUAL MEETING.—LAW EXCHANGE.

AMONG the many useful suggestions contained in the report of the Committee of the Society of the Attorneys and Solicitors of Ireland, which has been just published, there is one which is remarkably simple, but most valuable and practical in its nature. We refer to the recommendation to be found at the close of the Report, namely,—"If, during term time, and the sittings after, a practice were adopted of the members assembling each day at the solicitors' room, at the same given hour (say three o'clock,) much time might be saved which is now lost by parties searching for each other through the various Courts and offices." The committee accompany this suggestion by an expression of their opinion that its adoption "would give general satisfaction, and effect a great saving of valuable time." There can be no doubt it would have the most beneficial effects. Merchants have a particular place and a particular hour on each day of business, at which they are almost sure of meeting each other. The same may be said of stock brokers. There is no reason why attorneys and solicitors should not be equally sure of their time and regardless of their convenience.

The general adoption of the plan proposed by the committee would lead to very desirable results, and we should therefore regret it if it were not to give the Report in our next No.

not be left untried. Having experience of the activity and anxiety uniformly evinced by Mr. Lee, the Secretary of the Society, in every matter affecting the interests of the profession, we feel satisfied he will give his best assistance in carrying out any arrangements necessary for the purpose. We would suggest as an initiative step that a registry book, to be kept in the room of the society, might be opened, in which such members of the society as intended to act upon the suggestion should enter their names. The time for meeting might be conveniently fixed from three to four o'clock daily, commencing with the first day of each term, and terminating with the last day of each after sittings. From The Press.

NOTES OF THE WEEK.

COMMENCEMENT OF HILARY TERM.

So short an interval elapsed between the sitting of the Courts at the commencement of Hilary Term and the publication of this number, that we are compelled to notice the event briefly and hastily.

In the Equity Courts it is expected that there will not be any unusual pressure of business in Court, but that the absence of Court business will be compensated for by the vast increase of business in the Masters' Offices consequent upon the proceedings going forward under the Winding-up Acts.

In the Courts of Common Law the arrears have been reduced in so remarkable a degree that it does not seem to be impossible that two out of the three Courts will, at no very distant period, have an insufficiency of business to occupy them continuously throughout the Term. The applications for new trials in this Term will be comparatively few and unimportant, so that it may be fairly expected that at the close of the sittings after Term, the Courts of Common Pleas and Exchequer will have no arrears.

Those who look to the *Gazette* have for some time remarked the significant fact of the extraordinary decrease in the number of bankruptcies. The average number in each *Gazette* has for some weeks past not exceeded six for all England. Whether this arises from the improved state of trade and the alleged abundance of money, or from the unsatisfactory and still unsettled state of the Bankruptcy laws, or from a combination of both, we are not prepared at present to assert, but if the number of bankruptcies continues to diminish in the proportion it has hitherto done, the expediency of retaining such an establishment as the Court of Bankruptcy may be fairly questioned.

The authoritative announcement of the improved health of Lord Devenish has, as might have been expected, afforded general gratification in the profession. No promotions have been announced.

SOUTHWARK AND GREENWICH POLICE COURTS.

We are informed that Mr. Gilbert & Beckett, Magistrate for the Greenwich Police Court, has been removed to the Southwark Police Court, and Mr. Secker will now sit at Greenwich.

This will much increase the duties of Mr. & Beckett, and the arrangement affords satisfactory evidence of his competency to the business of the office.

REPEAL OF THE CERTIFICATE DUTY.

The Council of the Incorporated Law Society have commenced their preparations for an early movement in the approaching session. The English petitions are ready, or will speedily be so. And communications are taking place with the Law Societies of Ireland and Scotland.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

LORD CHANCELLOR.

Lord Chancellor.

In re Bartholomew's Trust. Nov. 13, 16, 1849.

WILL.—CONSTRUCTION.—VESTING OF LEGACY.

Held, affirming the decision of the Vice-Chancellor of England, that where a will contains an antecedent gift and a direction to pay the legacy on the attainment of age, the legacy vests in the testator's estate, and where no such gift appears from the will, in which case the attaining 21 is a necessary incident to the vesting.

THOMAS BARTHOLOMEW, by his will, dated in 1800, gave a sum of 3500*l.* to trustees, who were also appointed executors, upon trust to pay 1000*l.* to his elder daughter and her children, and to invest the residue, and pay the interest to his youngest daughter, Mary Anne, during her life, and at her death, to her children, and when they should severally attain the respective ages of 21 years, in equal shares, to whom I give and bequeath the same accordingly. There was also a clause of survivorship and of maintenance of the grand-children, payable in proportion to their respective shares. After the testator's death in 1826, his youngest daughter married Mr. Trought, who, upon his wife's death in 1847, took out administration as personal representative to a child, the issue of the marriage, but who died soon after his birth, and claimed the 1000*l.* The residuary legatees of the testator having also laid claim to the money, the trustees paid it into Court under the 11 & 12 Vict. c. 36. (The Vice-Chancellor of England having made an order for payment out to Mr. Trought, the petitioner, this appeal was presented by the residuary legatees.

Plaintiffs and Nominates for the appellant: Holt, B. 1849, and Nodder, for the respondent. They cited *Booth v. Booth*, 4 Ves. 399; *Rever v. Gresham*, 6 Ves. 230; *Leake v. Robinson*, 2 Meriv. 363; *Wentworth v. Beddes*, 1 Russ. & M. 303; *James v. Stuart*, 2 Harl. 14.

The Lord Chancellor said, that where there was an antecedent gift and a direction to pay the legacy on attaining 21, the legacy would vest, but if there were no such antecedent gift,

the attainment of age would be necessary to vest the legacy: *Leake v. Robinson*, 2 Meriv. 363. The words in the will,—"To whom I give and bequeath the same accordingly," constituted such a gift, and the appeal must be dismissed with costs.

Penn v. Insull. Nov. 17, 1848; Nov. 20, 1849.

MARRIAGE ARTICLES BY INFANT HEIRESS. CREDITORS' SUIT.—DEBTS OF INTESTATE.

Held, affirming the decision of the Vice-Chancellor Wigram, that the heiress of an intestate debtor, being an infant at the time of his death, cannot make such a binding contract as will preclude the creditors from having their debts paid out of the real estates where the personally proper insufficient.

THOMAS STANLEY HILL died intestate in March, 1837, and indebted to an amount exceeding his personal estate, leaving his only child, Mary Ann Stanley Hill, a minor, his heiress at law, who in August, 1837, and during her minority, married Mr. Insall, one of the defendants. The intestate's real estates had been settled by the marriage articles for the benefit of herself for life, remainder to her husband for life, and even to the issue of the marriage as tenants in common. There was a proviso that the articles might, within six months after she should attain 21, be varied by a new settlement, and accordingly in May, 1840, more than six months after Mrs. Insall attained 21, a settlement was executed containing a power of revocation and new appointment. This power was then executed, and real estates were directed to be sold, and the debts of the intestate paid out of the proceeds, the residue to be invested. A suit was instituted in 1844, by one of the children, impeaching the settlement of May, 1840, after the death of Mrs. Insall in 1840, against the other children and the trustees of the settlement, and of the articles. The Vice-Chancellor of England decided that the settlement was invalid as between the parties before the Court, and the creditors then instituted this suit in December, 1844, to render Mr. Insall's estate liable for his

debts. The Vice-Chancellor Wigram, in May, 1848, held, that the estate was liable, whereupon this appeal was presented by the children.

Wood and Malins for the appellants, cited *Spackman v. Tymbrell*, 8 Sim. 253; *Heming v. Archer*, 7 Beav. 515; the *Solicitor-General* and *De Gex* for the respondents, cited *Simson v. Jones*, 2 Russ. & M. 365.

The Lord Chancellor said, the decree of the Vice-Chancellor of England disposed of the deed of May, 1840, and in respect to the articles, the heiress, being a minor, could not make a binding contract against the creditors of her debtor intestate. The appeal would, therefore, be dismissed with costs.

Mangles v. Dizon. Nov. 15, 1848; Nov. 20, 1849.

CHARTER-PARTY. — JOINT ADVENTURE. — FREIGHT.

Where the charterers of a vessel allowed the owners to deposit the charter-party with the defendants as security for a loan, and had made payments on account of the freight to the defendants, held, reversing the decision of the Vice-Chancellor Knight Bruce, that the defendants were entitled to recover the whole freight, no notice having been given to the defendants of a private arrangement, which did not appear on the charter party, that the adventure was joint between the charterers and the owners.

THIS was an appeal from an order of the Vice-Chancellor Knight Bruce, restraining the defendants, Messrs. Dixon, bankers, from proceeding with an action at law to recover the amount of freight earned by a ship chartered by the plaintiffs of Messrs. Boyd & Co., who had deposited the charter-party with the defendants as a security for a loan of 12,000*l.*, and of which notice had been given to the plaintiffs. It appeared by a private agreement between the plaintiffs and Messrs. Boyd & Co., that the adventure was to be joint, but no mention thereof was made in the charter-party, nor notice given to the defendants. The plaintiffs continued to make payments on account of the freight until the speculation proved a failure, and Messrs. Boyd & Co. were declared bankrupts, when they claimed the freight as a set-off against the losses of the adventure, and obtained this injunction.

Cooper and Lovat for the appellants; *Humphrey* and *J. W. Smith* for the respondents.

The Lord Chancellor said, that as the plaintiffs had allowed Messrs. Boyd & Co. to exercise a complete ownership of the vessel and deposit the charter-party, the defendants were entitled to recover the freight from the time of the deposit: *Duke of Beaufort v. Neale*, 12 C. & F. 248. The plaintiffs had paid sums on account of the freight to the defendants, and had thereby recognized their right. The injunction would therefore be dissolved with costs.

Lord Alvanley v. Lord Alvanley. April 28, May 2, Nov. 21, 1849.

SALE OF MANOR. — CONDITIONS OF SALE. — MINES, &c. — PRINCIPAL AND AGENT.

Held, *varying the order of the Vice-Chancellor of England, that as the conditions of sale of a certain manor did not specifically except the mines from passing, although it appeared from the general conditions and the smallness of the price paid that they were not intended to be sold, and the purchaser was of opinion they were to be sold with the lot, the purchaser ought not to pay the costs of a petition for a re-sale; but held, that he was not entitled to his costs upon his now accepting the purchase.*

Semble, that the conduct of an agent, in order to bind his principal by his knowledge of a fact connected with his agency, should be evident during the exercise of the agency.

CERTAIN estates in Cheshire, belonging to Lord Alvanley, having been put up for sale for the benefit of his creditors, under an order of Court, Mr. Howard became a purchaser of the manor of Brodbury for 70*l.* It appeared that the conditions of sale specially excepted the mines, &c., from the other lots, but no such reservation was attached to this lot, and that Mr. Howard had on entering the auction-room instructed an agent to purchase the lot. The Vice-Chancellor of England having made an order, upon the petition of the trustees of sale, that the mines, &c., were not intended to be sold, and that the lot should be re-sold and the purchaser pay the expense thereof, this appeal was presented.

Roll and Cole for the appellant; *Bethell and Toller*, for the respondents, contended that as the agent was aware at the time of the sale that the mines, &c., were exempted from the lot, the purchaser was bound by that knowledge.

Stuart and Lewin for the trustees.

The Lord Chancellor said, the agency had commenced and ended at the sale, and therefore any previous knowledge the agent had did not affect the purchaser, as the conduct of an agent must, in order to affect his principal, be evident in the agency during the exercise of it. As the purchaser had expressly declared he was unaware that the mines were not included, and the mistake arose chiefly from the ambiguity of the conditions of sale, he ought not to be fixed with the costs, but he would not receive any, since he might by a timely concession have prevented much expense. The order of the Court below would therefore be varied, and a reference directed to the Master to settle the conveyance without the mines to the purchaser, who was now willing to accept the costs to be paid by the trustees out of the fund.

Onslow v. Wallis. Nov. 21, 22, 1849.

APPOINTEE BY WILL. — TRUSTEE. — CONVEYANCE OF ESTATE.

A testatrix having an absolute ownership in real estates, with power of appointment, devised her real and personal estates to

plaintiff, and another in trust to pay there-out her debts and certain legacies in a paper marked A. This paper could not be found at the testatrix's death, and the plaintiff called on the trustees to convey the real estate to him. Held, that as he was the appointee he was entitled to the conveyance.

IN 1842, Mr. Sorel conveyed certain real estates in Leicestershire to the defendant, Mr. Wallis, on trust for his wife, Mrs. Sorel, and her appointees absolutely, and she, after her husband's death, devised her real and personal estates to the plaintiff, Mr. Onslow, and another, appointing them executors, and directing them to pay her debts and certain legacies specified in a paper marked A. The plaintiff at her death proved the will and paid her debts out of the personalty, but the paper marked A. not being forthcoming, and not knowing the amount of the legacies therein specified, he called on the defendant to convey the real estates to him. Upon the trustee's refusing so to convey, he filed this bill for a conveyance, and the Vice-Chancellor having decreed a conveyance, this appeal was presented.

Humphry and Bird, for the plaintiff, cited Burgess v. Wheate, 1 Eden, 177; Rolt and Prior, for the defendant, referred to Williams v. Lord Lonsdale, 3 Ves. 752; Roberts v. Walker, 1 Russ. & M. 752.

The Lord Chancellor said, that as the testatrix, who was the owner of the beneficial interest, might have called on the defendant to convey the estates to her appointee, and she had by will appointed the plaintiff, the trustee had no right to inquire as to what payments the devisee had to make. The executor may be called on to pay the legacies in the paper A. if it be found. The plaintiff was therefore entitled to a conveyance according to the case of *Burgess v. Wheate*, cited at bar, and the appeal would be dismissed with costs.

Corporation of Rochester v. Lee. Nov. 9, 1848, Nov. 23, 1849.

ACTION AT LAW.—NEW TRIAL OF ISSUE.—DISMISSING BILL.—PLAINTIFF'S RIGHT TO TOLLS.

Held, reversing an order of the Vice-Chancellor Knight Bruce, for the dismissal of a bill filed for an account of certain tolls on coals, and refusing a new trial on an issue, that before making such a decree, the Court should be satisfied that the plaintiffs have no possible right to the tolls, and where it appeared at the time of the issue that the presiding judge had considered that the plaintiffs might hereafter establish their case—the bill was retained for a year, with liberty to the plaintiffs to bring such action at law as they might be advised, to establish their right.

THIS was an appeal from an order of the Vice-Chancellor Knight Bruce, refusing a new trial of an issue and dismissing the bill, which was filed for an account of tolls for coals brought up the river Medway to Lee's wharf,

in the city of Rochester. The issue directed as to the plaintiff's right to the toll at law, was tried in the Exchequer, and judgment was given for the defendants.

The *Attorney-General* and *J. Russell* for the appellants; *Sir F. Theigier, Wigram* and *Shap-ter* for the respondents.

The Lord Chancellor said, that before dismissing the bill, which would operate as a bar to any future suit by the plaintiffs relating to the same matter, it was necessary to see that the plaintiffs' right to the toll was altogether untenable. The proper course would have been, therefore, to require the plaintiffs to establish their legal title to the tolls, by action at law. The result of the issue was as yet unsatisfactory, as it appeared from the notes of the Lord Chief Baron, who presided at the trial, the plaintiffs might still be able to make out their case. The order of the Court below would be varied, and the bill retained for a year, with leave to the plaintiff to bring an action, and the costs to be reserved.

Andrews v. Walton and others. Nov. 22, 24, 1849.

ATTACHMENT FOR CONTEMPT.—PRIVILEGE.—SECOND ATTACHMENT.

Where a plaintiff, an attorney, in contempt for the non-payment of costs of his bill which was dismissed, was arrested under an attachment, and it was subsequently discovered that he was attending the Registrars' Office professionally in the cause and was discharged: Held, that he was rightly arrested for the same contempt under a second attachment.

THIS was an appeal from the Vice-Chancellor Knight Bruce, refusing to set aside an attachment issued in 1833 against the plaintiff for costs amounting to 107l. odd, upon his bill being dismissed with costs. It appeared that an attachment issued, and the plaintiff, who was an attorney, was arrested while attending professionally at the Registrars' Office. The defendants, upon discovering their error, discharged the plaintiff, and issued a second attachment, under which he was again arrested.

Wood and Malins, for the plaintiff, contended that as the first attachment had been set aside for irregularity, the party so discharged could not be again attached for the same contempt without special leave of the Court, citing 5 Viner's Abr., tit. "Contempt," D. pl. 10; Etram v. Densett, Finch, 240, 253; (2 Vern. 89); In re McWilliams, 1 Sch. & Lef. 169; Roe v. Stokes, 1 Cowp. 136; Phillips v. Barrett, 4 Price, 23; Solly v. Greathead, 11 Ves. 170; Blackburn v. Stupart, 2 East, 243; Williams v. Townsend, 6 Sim. 296; 1 Dan. Ch. Pr. 585.

Macquereu, for the defendants, cited Good v. Wilks, 6 M. & S. 413; Phillips v. Price, 1 D. & L. 110; Plomer v. Bull, 5 A. & E. 823; Reynolds v. Newton, 1 Gale & D. 153.

The Lord Chancellor held, the plaintiff was properly taken into custody under the second attachment, as appeared from the cases cited

for the defendants at Bar, and the answers of the Clerk of Records and Writs to inquiries directed.

Vice-Chancellor of England.

Loder v. Arnold. Nov. 24, 1849.

INJUNCTION.—EQUITABLE MORTGAGES.—PURCHASER.

An *ex parte* injunction was granted, on the application of the purchaser of certain unfinished houses, who had employed the defendants, who were builders, and claimed a lien upon the houses as equitable mortgagees, to restrain the defendants from pulling down and removing the materials.

This was a motion for an injunction to restrain the defendants, who were builders, from pulling down certain unfinished houses and carrying away the materials. The plaintiff had purchased the houses and employed the defendants to finish them. The defendants claimed a lien on the houses as equitable mortgagees.

Shelbeare in support.

The Vice-Chancellor granted the injunction.

Wright v. Barnwell. Nov. 24, Dec. 3, 1849.

LEGACY DUTY REMAINING UNPAID.—LIABILITY OF EXECUTOR AND NOT RESIDUARY LEGATEE.

Held, that an executor, and not the residuary legatee, is a debtor to the Crown for the amount of the duty which he has received, and where payment has been made to the legatee, the executor is a debtor to the Crown with respect to the duty on those legacies, which he ought to see paid.

A TESTATOR, by his will, gave certain legacies, some of which were to be free of legacy duty, which was to be paid out of the residuary personal estate; and others were subject to the duty. The executor, Mr. Wright, of Henrietta Street, accordingly paid in full the legacies given free of duty, and the rest, some in full and others minus the duty. This duty remaining unpaid, the Crown claimed it against the legatee under the 3d G. 3, c. 52.

Cooper and Cooke for the appellants, The Solicitor-General and *Macle* for the Crown, cited *Hill v. Atkinson*, 2 Meriv. 45.

Bethell and *H. Clarke* for the residuary legatee, *Riddell* for the executor.

The Vice-Chancellor said, that the executor was a debtor to the Crown for the amount of such legacy duty as he had deducted from the legatee, and also in respect of the duty on those legacies which were paid in full, as it was his business to have seen it paid by the legatee, and that therefore the Crown had no lien on the residuary estate.

An order was subsequently made by consent to discharge the plaintiff from custody, unconditionally.

Vice-Chancellor Knight Bruce.

Espartero Edwards, in re Edwards. Nov. 23, 1849.

BANKRUPTCY LAW CONSOLIDATION ACT.—ASSETS.—BANKRUPT.

Seemly, that "reversionary interests" are not within the meaning of the expression "assets ready to be produced" in the 12 & 13 Vict. c. 106, s. 223; and held, therefore, affirming the decision of Mr. Commissioner Goulburn, that the appellant was rightly declared a bankrupt.

This was an appeal from the decision of Mr. Commissioner Goulburn, declaring the appellant a bankrupt. It appeared that he had presented a petition for arrangement on October 16, under the 12 & 13 Vict. c. 106, s. 211; which enacts, that "any trader unable to meet his engagements with his creditors," &c. "may present a petition to the Court, setting forth the true cause of such inability, and praying that his person and property may be protected from all process until further order," &c.

By the 223rd section it is provided, that "if it shall be shown that the affidavit filed with the petition was wilfully untrue, so far as concerned the assets ready to be produced to him," &c. "it shall be lawful for the Court to adjudge such petitioning debtor a bankrupt," &c. The appellant's property consisted of certain reversionary interests.

Kenyon Parker for the appellant.

The Vice-Chancellor said, that although the reversionary interests might, if sold, produce something, yet they were not within the words in the 223rd section of "assets ready to be produced," and that therefore he had rightly been adjudged a bankrupt.

Espartero Wells, in re Wells. Dec. 5, 1849.

BANKRUPTCY LAW CONSOLIDATION ACT.—CERTIFICATE OF CONFORMITY.—ASSETS.—NOTICE OF OPPOSITION.

Held, that assignees are not bound similarly to creditors under the 198th section of the 12 & 13 Vict. c. 109, to give notice of opposition to the granting of a certificate, but seemly, that the bankrupt may apply to the Commissioner if there be no notice for an adjournment, on the ground of surprise, in order to meet the objections.

This was a petition on appeal from the decision of the Commissioner, on a certificate of conformity of the first class, to a bankrupt, but suspending it for six months on the opposition of the assignees.

Swanton and W. Morris in support, contended, that as no notice of opposition was given by the assignees, the objections should not have been entertained. A creditor was obliged, under the 12 & 13 Vict. c. 106, s. 188, to give "to the registrar of the Court three clear days' notice in writing of his intention to oppose, and there was no reason for the exemption of assignees."

Russell and Glasse, contra, were not called upon.

The Vice-Chancellor said, that the 198th section did not require the assignee to give notice of their intention to oppose. If the bankrupt were taken by surprise by such opposition, he might apply to the Commissioner for an adjournment to meet the objections. As no such application had been made on the merits, but merely on the right of estoppel for want of notice, the petition would be dismissed with costs.

Queen's Bench.

Braham v. Joyce. Nov. 26, 1849.

PALACE COURT.—JURISDICTION.—ORDER OF IMPRISONMENT.

Held, that the judge of the Palace Court had power, until the 31st Dec., 1849, under the 12 & 13 Vict. c. 101, s. 15, to enforce the judgments of other Courts by virtue of the 8 & 9 Vict. c. 127, s. 1, and that, where the instalment ordered of the debt was tendered without all subsequent costs under the 8 & 9 Vict. c. 127, s. 3, an order of imprisonment for 35 days was rightly made.

Where, any objection to the validity of such order, should be made to the Court from whence the judgment on which it proceeds is issued.

There was a motion to discharge the defendant out of custody under an order of the judge of the Palace Court, for default in paying a judgment debt, obtained in the Court of Exchequer, on Sept. 21st last, by instalments of 5s. By the 8 & 9 Vict. c. 127, s. 1, the judge of any Court for the Recovery of Small Debts had power to imprison for a period not exceeding 40 days, for failure in paying the instalments of a debt recovered in any Court within the same jurisdiction. The Palace Court was abolished by the 12 & 13 Vict. c. 101, s. 13, which provided that after the 1st of August, no action or suit should be commenced in the said Court, and by the 14th section its powers were to cease on 31st December, except as to causes then depending, which were to be transferred to the Court of Common Pleas, or the County Courts.

A Pleader in support contended that as the power of commencing proceedings in the Palace Court was taken away after August 1, and the power only reserved of enforcing its own judgments, it was no longer a Court for the Recovery of Debts. The order was also wrong, for it directed the defendant to be imprisoned until the payment of the whole debt and costs, whereas by section 3 of the 8 & 9 Vict. c. 127, on payment of the first instalment, and the costs of the subsequent proceedings, the prisoner was entitled to his discharge. The instalment had been tendered, but there was no affidavit of the tender of the costs.

The Court, which was not called on, held, that the Palace Court had power, under the 12 & 13 Vict. c. 101, s. 15, until the 31st December, to enforce the judgments of other Courts, which was given by the 8 & 9 Vict. c. 127, s. 1. The order was valid, and even if it were not, the remedy proceeded from the Court in which the judgment was obtained. As the costs remaining due at the time of the order of imprisonment being made had not been tendered according to the 3rd section of the 8 & 9 Vict. c. 127, the rule would be refused.

Regina v. Guardians of Carnarvon and Anglesey Union, Nov. 29, 1849.

LUNATIC PAUPER.—ORDER OF MAINTENANCE.—ORDER OF REMOVAL.

Where an objection to the form of an order of removal of a pauper lunatic had not been raised before the Sessions, held, that it could not be raised on an appeal from the order of sessions quashing an order of maintenance.

Seem, that, the 48th section of 8 & 9 Vict. c. 129, is only directory on the justice to make an order upon the bringing up of a lunatic by the parish officers within three days.

A writ nisi had been obtained to quash an order of sessions quashing an order of justices for the maintenance of a pauper lunatic. It appeared that the pauper had been removed from the Carnarvon and Anglesey Union to Haydock Lodge, Lancashire, described as a lunatic hospital. The objections to the order of maintenance were, first, that it did not state there was no lunatic asylum in Carnarvonshire, or that it was full; 2ndly, that it was made more than three days after the surgeon's certificate of the pauper's lunacy; and thirdly, that the order of removal directed the removal of the lunatic to the "lunatic hospital" of Haydock Lodge, whereas it was a licensed house. By the 8 & 9 Vict. c. 126, s. 54, an order of removal of a pauper lunatic extends to his admission into an asylum out of the county, where there is no county asylum, or the lunatic cannot be taken in the county asylum, which circumstances must be stated on the order of removal to such other asylum. The medical officer of the parish is directed by section 49 to give notice to the overseers and the relieving officer of any lunatic pauper, and by section 49 the overseer or relieving officer shall, within three days of his knowledge of the pauper's lunacy and of his being under the care of some relative who neglects him or treats him cruelly, give notice to a justice of the peace, who shall require such lunatic to be brought before him within three days.

Townsend showed cause. Welsby and Aspland were not called upon.

The Court said, that, as the objection to the order of removal, not stating that there was a county lunatic asylum, or that it was full, had not been taken at the Sessions, it could not be taken now. The 48th section was only directory on the justice to make the order upon the lunatic's being brought before him by the parish officers. The order of Session would therefore

be quashed and the order of maintenance confirmed.

Court of Common Pleas.

Berry v. Irwin. Nov. 19, 20, 1849.

INSOLVENT.—DISCHARGE FROM CUSTODY.—COSTS.

Where a defendant inserted in his schedule, filed under the 1 & 2 Vict. c. 110, the drawer's name in respect of two bills, and afterwards amended the schedule and inserted the name of the indorsee, who brought an action thereon, obtained judgment, and lodged a detainer with the keeper of the Queen's Prison against the insolvent: Held, that having obtained his discharge under the 1 & 2 Vict. c. 110, it operated as a discharge as well against costs prior as against those incurred subsequently to the adjudication. And a rule was made absolute, with costs, for the insolvent's discharge from custody.

THIS was an action against the acceptor by the indorsee of two bills of exchange for 100*l.* and 150*l.*, and a verdict passed for the plaintiff at the Surrey Assizes on 7th August last, and judgment was signed and a detainer lodged against the defendant, then a prisoner in the Queen's Prison. The defendant had, on the 24th of May, filed his petition for a discharge under the 1 & 2 Vict. c. 110, and on the 18th of June filed his schedule inserting the drawer's name as the holder of the bills, which he amended on the 7th August, and inserted the plaintiff's name in lieu thereof, and obtained his discharge. A rule *nisi* for the defendant's discharge having been obtained, with the costs of the application,

Lush showed cause against the rule, which was supported by *Miller*.

The Court said, that as the insolvent had inserted in his schedule the drawer's name in respect of the bills, and by the 75th section of the 1 & 2 Vict. c. 110, was discharged from the several debts due and any claims of persons not known to the insolvent at the time of the adjudication who might be indorsees or holders of any negotiable security set forth in the schedule, he had done all that was necessary. The 79th section operated as a discharge for the costs incurred before the filing of the schedule; and although no mention was made of subsequent costs, yet as he had been dis-

charged under the 1 & 2 Vict. c. 110, and could only obtain his release from the plaintiff's detainer by this application, the rule would be made absolute with costs.

Smith v. Pritchard and others. Nov. 21, 1849.
HIGH BAILIFF OF COUNTY COURT.—LIABILITY.—FALSE IMPRISONMENT.

Held, that the power of officers of the County Courts under the 9 & 10 Vict. c. 95, s. 114, is optional, and not mandatory, to take a party into custody for assault in the execution of their duty, and that, therefore, the high bailiff is not liable in an action for false imprisonment committed by the under-bailiff for taking him into custody.

THIS action was brought by the plaintiff, a horse-hair manufacturer, for breaking and entering the plaintiff's warehouse and for an assault and false imprisonment. It appeared that an attachment had issued out of the Lambeth County Court against the plaintiff's son for costs incurred in a plaint in which he had been nonsuited, directed to William Pritchard, High Bailiff of the Lambeth County Court, and indorsed to William Pritchard, High Bailiff of the Southwark County Court. The defendants, Robert Beaver and Jones, the under-bailiffs, went to the plaintiff's, believing the son was there, and upon the plaintiff resisting their entry, took him into custody, but the plaintiff had been subsequently set at liberty by Mr. Cottingham. At the trial before Mr. Justice Williams, a verdict was found for the plaintiff, 10*l.* for the illegal entry, and 60*l.* for the assault and false imprisonment, against the under-bailiffs Beaver and Jones, and 10*l.* against Pritchard for the illegal entry, with leave to move to enter the verdict for 70*l.* as against Pritchard, or against the three for 10*l.* only.

Humphrey showed cause against the rule, which was supported by *Byles*, S. L., and *Booth*.

The Court said, that as the giving the plaintiff into custody was not under the authority of the high bailiff, but merely by virtue of the 114th section of the 9 & 10 Vict. c. 95, and he was placed by the 33rd section in the same position as a sheriff, he was not liable for the false imprisonment. The rule would be absolute to enter the verdict for the plaintiff for 10*l.* against all the defendants, but discharged as to the rest, but without costs.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Witney Turk, 1830.

AT LINCOLN'S INN.

Walter Chancellor.

APPEALS.

M'Intosh v. Great Western Railway Company, appeal.

Fuller v. Bennett, appeal.

Watson v. Masters, appeal.

Dodson v. Powell, appeal.

Hawkins v. Jackson, appeal.

Cowell v. Watts, Watts v. Cowell, appeal.

Andrew v. Andrew, appeal.

Maris v. Solomons, appeal.

Purchase v. Skiff, appeal.

Attorney-General v. Gibbs, Rock v. Ditto, appl.
 Bagshaw v. East India Railway, Ditto v. Ditto,
 2 appeals.
 Masters v. Scales, re-hearing.
 Loader v. Clarke, appeal.
 Miller v. Priddon, appeal.
 Cross v. Sprigg, appeal.
 Sanderson v. Cockermooke and Workington Rail.
 Company, appeal.
 Dawson v. Brinckman, appeal.
 Bagshaw v. M'Niel, appeal.
 Padbury v. Clarke, appeal.
 Attorney-General v. Pilgrim, appeal.
 Coleman v. Mellerab, appeal.
 Adams v. Blackwall, appeal.
 Hirst v. Tolson, appeal.
 Tomlinson v. Troughton, Haydock v. Tomlinson,
 appeal.
 Weaver v. Grant, 2 appeals.
 Waring v. the Manchester, Sheffield, and Lin-
 colnshire Railway Company, appeal.
 Coleman v. Mellerab, appeal.
 Hughes v. Williams, appeal.
 Walsh v. Trevanion, 4 causes, appeal.
 Price v. Berrington, 3 causes, 2 appeals.
 Williamson v. Gordon, appeal.
 Benyon v. Nettlefold, appeal.
 Hutchison v. Teycheume, appeal.
 Short v. Mercier, appeal.
 Roberts v. Jones, appeal.
 Fowler v. Reynal, appeal.
 Miller v. Huddleston, appeal.
 Wilkinson v. Godson, appeal.
 Yates v. Madden, appeal.
 Innes v. Sayer, appeal.
 Menzies v. Connor, 2 appeals.
 Hickling v. Boyer, appeal.
 Rowland v. Witherden, appeal.
 Myers v. Perigal, appeal.
 Pearson v. Goulden, appeal.
 Pearson v. Beck, appeal.
 Pearson v. Hulme, appeal.
 Pearson v. Oldham, appeal.
 Watkins v. Williams, Havard v. Church, appeal.
 Padley v. Lincoln Water Works Co., appeal.
 Emmett v. Dewhurst, appeal.
 Briggs v. Penny, appeal.
 Hickman v. Hickman, appeal.
 Rodick v. Gandell, appeal.
 Robinson v. Geldart, appeal.

Master of the Rolls.

Hilary Term, 1850.

JUDGMENTS (reserved).

{ Hooper v. Salmon.
 { Tugwell v. Hooper.
 Salomons v. Laing, 2 demurrers.
 Bailey v. Lancashire and Cheshire Railway
 Company.
 { Holl v. Gordon, }
 { Same v. Holl, }
 Blenkinsopp v. Blenkinsopp.

PLEAS AND DEMURRERS.

Stand over, Dean and Chapter of Ely v. Gayford.
Do., Same v. Waddelow.
Do., Same v. Same.
Do., Same v. Bliss.
Do., Same v. Shillito.
Do., Same v. Hensley.
Do., Lewis v. Baldwin, on defendant's objection
for want of parties.
Do., Minn v. Stant, objection for want of parties.

Gregory v. Marychurch, exors.
 Hodgson v. Earl Powis, dem.

CAUSES.

S. O. To present petition, Stourton v. Jerningham
Stand over till after Report on exceptions. Gas
Light and Coke Com. v. Symonds, Symonds v. Gas
Light and Coke Company, Stillman v. Gas Light
and Coke Company, fur. dirs. and costs.
Christy v. Courtenay, fur. dirs. costs & petition.
Stand over to amend, Baynton v. Hooper. Same v.
Same.
S. O., until case returned from Q. B., Wilson v.
Eden, fur. dirs. and costs.
Biggs v. Naylor.
Stand over to add parties, Johnson v. Thomas.
Stand over until after trial of action at law, Hele v.
Bexley, Same v. Same, Same v. Same, Same v.
Boywer, Same v. Donovan, exors. fur. dirs. and
costs.
Hargrave v. Hargrave, fur. dirs. and costs.
Ballenger v. Hawes, Buck v. Dennis, fur. dirs.
costs, and petition.
Attorney-General v. Marquis of Bristol, Same v.
Hine, and petition.
Agassiz v. Squire.
Thornber v. Sheard.
Fenwick v. Greenwell, fur. dirs. and costs.
Attorney-General v. Walmsly, Same v. Dale, fur.
dirs. and costs.
Read v. Strangways, Same v. Treherne, exors.
fur. dirs. and costs.
Howard v. Prince, Same v. Stapleton, Same v.
Howard, fur. dirs. costs and petition.
Greenwood v. Penny, Boyle v. Same, fur. dirs.
and costs.
Part heard, Hitchcock v. Clendinen, Same v. As-
pinwall, Same v. Hardy, fur. dirs. costs & petition
in M'Hardy v. Hitchcock.
Lockhart v. Hardy, Thomas v. Same, Norman v.
Same, Hardy v. Lockhart, Lockhart v. Arundell,
Same v. Lee, Same v. Hardy, Same v. Crouch, fur.
dirs. and costs.
Rooth v. Tomlinson.
Easter Term, Langdale v. Morrison.
Coxhead v. Babb, Ditto v. Ditto.
Whalley v. Lord Suffield.
Meddowcroft v. Campbell, Same v. Hughes.
Ballenger v. Hawes, Buck v. Denis.
Gregory v. Davies.
Penruddock v. Hammond.
Johnstone v. Thomas.
Cotton v. Clerk.
Morgan v. Morgan, Morgan v. Pulman, Lives v.
Pulman, exors.
Guardner v. Boucher.
Moore v. Smith.
Denne v. Denne.
Ellis v. Bowman.
Moss v. Moss.
Shallcross v. Wright, fur. dirs. and costs.
Biddles v. Jackson, Same v. Same.
Byrne v. Newport.
Jenkins v. Wadson, Shipley v. Wadson, fur.
dirs. and costs.
Thornton v. Knight, Palmer v. Knight, fur. dirs.
and costs.
Wood v. Sheldar, Same v. Same, fur. dirs. and
costs.
Whicker v. Hume, Hume v. Gilchrist, exors.
Lewis v. Lewis, Same v. Duggin, fur. dirs.
costs.
Biederman v. Seymour, fur. dirs. and costs.
Harley v. Hawshaw.
Kirkman v. Miester, fur. dirs. and costs.

Gresley v. Earl of Chesterfield, fur. dirs. and costs.

NEW CAUSES.

Creak v. Irving.
Kewney v. Bradshaw.
Lantour v. Holcombe, Lantour v. Farquhar.
Gregory v. Spencer.
Cohen v. Wilkinson.
Oliver v. Edmonstone.
Homes v. James.
Attorney-General v. Archbishop of York.
Same v. Same.
Mount v. Mount.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Bates v. Backhouse, demurrer.
Parkyn v. Cape.
Stammers v. Halliday, fur. dirs. and costs.
Ditto v. Sturges, cause by order.
Deare v. Bates, fur. dirs. and costs.
Fairhurst v. Malcolm, exons.
Freeman v. Norton.
Mason (pauper) v. Wakeman.
Bell v. Rea, Rea v. Bell.
Holbeck (pauper) v. Holbeck.
Attorney-General v. Adams.
Bignold v. Yeo.
Spilling v. Sims, fur. dirs. & costs.
A. Fletcher v. Moore, ditto.
Branch v. Bank of England, ditto.
Bird v. Smith.
Enderby v. Gunter.
Wilkinson v. Hartly, exons. and fur. dirs.
Jones v. Parry.
Green v. Wallis.
Padwick v. Hanslip.
Mayor of Berwick v. Murray.
Scarsbrook v. Skelmersdale, pt. hd.
Fletcher v. Rumsden.
Langdon v. Woods, fur. dirs. and costs.
Gardner v. Williams.
Devey v. Fisher.
Roe v. Goocheridge, pro confesso.
Bryant v. Bryant, fur. dirs. and costs.
Sergison v. Sergison, ditto.
Foster v. Greaves, Foster v. Foster.
Wright v. Bell.
Trant v. Duffell, fur. dirs.
Shephard v. Hancock.
Byrne v. Earl of Ranfurly.
Porter v. Simson.
Peel v. Hague, 4 causes.
Paterson v. Scott, fur. dirs. and costs.
Spruce v. Perren, ditto.
Savage v. Savage, exons, ditto.
Cooper v. France.
Hatherell v. Baylis.
Hardcastle v. Methley.
Onyon v. Washbourn.
Savage v. Savage, exons. and fur. dirs.
Smith v. Follett, Ditto v. Pennell.
Seagrave v. Pope.
Webster v. Parratt.
Staines v. Bourne.
Cooke v. Rich.
Curtis v. Cotton.
Baydon v. Watson, 4 causes, fur. dirs. and costs.
Charlton v. Bristlebank.
Harries v. Rainbott.
Mortimer v. Mortimer.

Burbury v. Jee.
Roberts v. Bethwin.
Duke of Leeds v. Earl Amherst, exons.
Myatt v. Price.
Haynes v. Barton.
Chapman v. Grieve.
Ashton v. Jones.
Beebe v. Sturton, fur. dirs. and costs.
Lewin v. Kellett.
Heathcote v. Wyndham.
Eckford v. Roome, 2 causes.
Newcombe v. Muir.
Ellis Fletcher v. Moore.
Stamp v. Stamp.
Norman v. Hammack.
Hyde v. Neate, fur. dirs. and costs.
Collinge v. Knight, 2 causes.
Collinge v. Collinge.
Campbell v. Houston.
Lloyd v. Lloyd.
Trumpler v. Lockett.
Baron Rossmore v. Mawbatt.
Jenkins v. Haynes, fur. dirs. and costs.
Mason v. Best.
Flood v. Browne.
Attorney-General v. Bishop of St. David's, 6 causes, fur. dirs.
Pepper v. Decker, fur. dirs. and costs.
Ann Fletcher v. Mallin.
Alice Fletcher v. Ditto.
Deacon v. Cook, 2 causes.
Waters v. Mynn.
Hustow v. Needham, exons.
Short, Arden v. Ashley.
Davies v. Proctor.
Jermy v. Jermy.
Shore, Timmins v. Bradney.
Attorney-General v. Lambert.
Attorney-General v. Bishop of Litchfield, fur. dirs. and costs.
Wix v. Wix, ditto.
Milne v. Gilbert, ditto.

Vice-Chancellor of the Duchy of Lancaster.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Shepherd v. Shephard, demurrer.
Inman v. Wearing, dem.
Easter Term, Stanley v. Bulkeley.
S. O., Gore v. Bowser.
Smitheman v. Spicer.
To be mentioned Fyler v. Newcombe.
To fix a day, Fyler v. Newcombe, Fyler v. Valgy.
S. O., Froggatt v. Wardell.
Gundry v. Gundry.
Davies v. Davies.
Atkinson v. Lion.
Read v. Newland.
Tomney v. Tomney.
Glynn v. Chamberlayne.
Single v. Terrell.
Edgson v. Edgson, 2 causes.
Wilkes v. Slaney.
Bate v. Hoopes.
Lee v. Lee.
Lyde v. Lipscombe, Bernard v. Lipscombe.
Barron v. Barton.
Chapman v. Selter, exons., 2 sets.
Leadbeater v. Faulkner.
Davies v. Royle.
Shackels v. Richardson, fur. dirs. and costs.
Davies v. Davies.
Rangeley v. Rangeley.
Kendall v. Wheeler.

Edwards v. Grove.
 Deakin v. Beardmore.
 Woodburns v. Woodburns.
 Geach v. Pedlar.
 Burch v. Coney, 3 causes.
 Chave v. Dunn.
 Beech v. Viscount St. Vincent.
 Norris v. Sandford.
 Taylor v. Butler, fur. dirs. and costs.
 Warr v. Howes.
 James v. Winwood.
 Gatty v. Croft.
 Savary v. Surr, exons.
 Lloyd v. Nasmyth, pro confesso.
 Lemmer v. Miller.
 Short, Morris v. Walton.
 Short, Cadwallader v. Eagle, fur. dirs.
 Prentice v. Taber, 3 causes, fur. dirs. and costs.
 Sander v. Sander, fur. dirs. and costs.
 19th Jan., Evans v. Richards.
 19th Jan., Wood v. Charter.
 Tubby v. Tubby, fur. dirs. and costs.
 21st Jan., Attorney-General v. Fooks, Ditto v. Millidge.
 Symons v. James, 6 causes, fur. dirs.
 Geo. v. Mayor, Aldermen, and Burgesses of Manchester.
 Attorney-General v. Wint.
 Ormerod v. Parkinson.

Vice-Chancellor's Signatures.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.
 12th Jan., Clay v. Rufford, re-heard.
 Mence v. Bagster.
 12th Jan., Toulmin v. Copland.
 12th Jan., McCalmont v. Rankin, McCalmont v. Turner, Ditto v. Bird, fur. dirs., pt. heard.
 Stoney v. Stoney.
 Newman v. Sillett.
 Winthrop v. Murray.
 Wisden v. Wisden.
 Price v. Griffith.
 Burt v. Burnham, 4 causes, fur. dirs. and costs.
 Gray v. Burt, fur. dirs. and costs.
 Evans v. Pritchard.
 Snow v. Parry.
 Johnson v. Johnson, Ditto v. Ditto.
 Savary v. Savary, Ditto v. Will, exons.
 Kekewick v. Manning.
 Banbury v. Sturgis.
 Beckett v. Bilbrough.
 Gedge v. Nevill.
 Beeching v. Morphey.
 Elsey v. Lutyens.
 McFarlane v. Underwood, fur. dirs. and costs.
 Thatcher v. Lambert, fur. dirs. and costs.
 Short, Thomas v. Heath.
 Sharpe v. Sharpe, 6 causes, fur. dirs. and costs.
 Bishop v. Vickers, Ditto v. Stowers, fur. dirs. and costs.

COMMON LAW CAUSE LISTS.

Common Pleas.

REMARKS: See the month names under 1850.
 (13th Queen Vict.)

New Trials of Michaelmas Term, 1849.
 London, Moss and others v. Smith and another.
 Surrey, Hamilton v. Cochrane.
New Trials of Hilary Term 1849.
 Middlesex, West v. Barendale.

New Trials of Easter Term 1849.

London, Kincaid and others v. Willis, secretary.
 London, Same v. Same.

New Trials of Michaelmas Term 1849.

Middlesex, Doe (Church) v. Pontifex and another.
 Middlesex, Spear v. Ward.
 London, Bell, P. O., v. Welch and another.
 London, Boulter v. Brooks.
 London, Same v. Peplow.
 London, Smith v. Hamilton, Treasurer, &c.
 Suffolk, Johnson and another, assignees, &c. v. Lord Huntingfield and another.
 Flint, Maurice v. Marsden.
 Surrey, Barnwell, P. O., &c., v. Sutherland.
 Surrey, Same v. Same and others.
 Lincoln, Robinson and ux. v. Marquis of Bristol and others, in quare impedit.
 Berks, Kidgell v. Moor, Clk.
 London, Yates and others, assignees, v. Hopps.

CUR. AD. VULT.

Phillips v. Lewis.
 Croll v. Edge.
 Barnes, admor., v. Ward.
 Somerville v. Hawkins.
 Jones and another v. Broadhurst.
 In the matter of Thomas D. Keighley, gent., in Keighley v. Goodman.
 Catlin v. Hills and others.
 Heyhoe v. Burge.
 Morse and another v. same.
 Newton, Esq., v. John Chaplin.

Demurrer Paper for Hilary Term, 1850.

Wednesday, 16th January.

Robinson and ux. v. Marquis of Bristol and others, in quare impedit.
 Sterry, executrix, v. Clifton.
 Navone v. Hadden and another.
 Temple v. Sligh.
 Storie, clerk, v. Bishop of Winchester.
 Anderson v. Coventry and another.
 In re Foster.
 Hancock and another v. York, Newcastle, and Berwick Railway Company.
 Harrison v. Round.
 Tassell v. Cooper.
 Same v. Same.
 Overton and another v. Harvey.
 Kepp and another v. Wiggett and others.
 Howard v. Shepherd.
 Levy v. Moylan, Esq., and others.
 Williams and others v. Williams.
 Eastern Counties Railway Company v. Eastern Union Railway Company.
 Hitchins v. Kilkenny and Great Southern and Western Railway Company.
 Bridger and others v. Costiff.
 Hutton v. Seyler.
 Preston v. Winter.
 Walker v. Corles.
 Mayor, &c., of London, v. Parkinson and others.
 Friday, 18th January.
 Lomas v. Bradshaw.
 Page and others v. Newmarsh.
 Callender v. Howard.
 McIness and another v. Baker.
 Hallett and another v. Wigram and others.
 Whitehouse v. Owen.
 Wetherell v. Julius and another.
 Bank of Australasia v. Harding.

* For the Queen's Bench Cause Lists see last No.

Exchequer of Pleas.**PEREMPTORY PAPER.***For Hilary Term, 1850.—(13th Vist.)*

To be called on the 1st day of the Term after the Motions, and to be proceeded with the *sixth day* if necessary, before the *Judges*.

In the matter of the *Hammersmith Rent Charge Allotments*.

In the matter of the *Arbitration between T. M. Coombs and another, two, &c., and James Fernley, Heginbotham, sen. v. Waters and another.*

Taylor, assignee, &c. v. Dent.

Miller and another v. De Burgh.

Norris and another v. Youngusband.

Walker v. Furnell.

Haley and another v. Pickering.

McGregor v. Keiley.

SPECIAL CASES*For Hilary Term, 1850.*

Remnants from Michaelmas Term, 1849.

For Judgment.

Bird and others, assignees, v. Brown and others, (Heard 14th Nov. 1849.)

For Argument.

Mortimer v. Hartley, by order of Vice-Chancellor Knight Bruce.

Norman v. Thompson, special verdict.

Spence and others v. Mountague, by order of Baron Platt.

Freeman and others, assignees, v. Whitaker, by order of Baron Platt:

Burdie v. Mann, pursuant to award.

Doe dem. Dean and Chapter of the Cathedral Church of St. Peter, in Exeter v. Phelps, by order of Nisi Prius. (To stand over until Easter Term, but to keep its place in the paper).

Carr v. Mostyn, by order of Nisi Prius.

Shield v. Wilkins, by order of Baron Platt.

Denistoun and others v. Young and others, by order of Nisi Prius.

REMANENTS.*For Hilary Term, 1850.*

Remnants from Michaelmas Term, 1849.

For Judgment.

Graham and others, assignees, &c., v. Gibson and another. (Heard 6th Dec., 1849.)

Grove v. Withers. (Heard 6th Dec. 1849.)

Same v. Same, Motion. (Heard 6th Dec., 1849.)

Hutchinson, admix., v. The York, Newcastle, and Berwick Railway Company. (Heard 7th Dec., 1849.)

Bignell v. Harpur, executor, &c. (Heard 8th Dec., 1849.)

For Argument.

Southby v. Bridgman. (Stayed by injunction.)

Milvain v. Mather (P. O.)

Chapman and another v. Milvain.

NEW TRIAL PAPER.*For Hilary Term, 1850.*

FOR JUDGMENT.

London.—Sleigh v. Sleigh—Crowder.

FOR ARGUMENT.

London.—Ralli v. Dennistoun—Attorney-General.

Maidstone.—Midland Great Western Railway Company of Ireland v. Farquhar—Sir F. Theaiger. (To stand over until bill of exceptions in another case disposed of.)

Maidstone.—Midland Great Western Railway Company of Ireland v. Masterman—Sir F. Theaiger. (To stand over as above.)

Middlesex.—Arber v. Lewis—Attorney-General.

Middlesex.—Nottidge v. Ripley—Sir F. Theaiger.

London.—Tewee v. Henderson and another—Attorney-General.

London.—Croome v. Fairbairne and another—Attorney-General.

London.—Noble v. Emmett—Martin.

London.—Gibson and another v. Ryan—Watson.

Maidstone.—Storror v. Harman—Lush.

Lewes.—Wills, sec., v. Murray, extrix—Martin.

Lewes.—Same v. Robertson and another—Martin.

Maidstone.—Same v. Murray, extrix—Chambers.

Maidstone.—Same v. Robertson and another—Chambers.

Croydon.—Bishep v. Canan and others—Serjeant Channell.

Croydon.—Innis v. Aggett—Chambers.

Croydon.—Same v. Same—Gurney.

Croydon.—Caldwell and others v. Dawson—Fecock.

Leicester.—Glover v. The London and North Western Railway Company—Whitehouse.

Hereford.—Thomas v. Thomas, executrix—Keating.

Bedford.—Doe dem. Adams v. Baldwin—O'Malley.

Huntingdon.—Bail v. Meller and another—Chambers.

York.—Kaye v. Brett and another—Watson.

York.—Wiles v. Woodward—Watson.

Durham.—Wilkinson v. Candler, executrix—Watson.

Newcastle.—Henderson and others v. Robert—Knowles.

Carlisle.—Grieve, administratrix, v. Melton—Temple.

Carlisle.—Same v. Same—Martin.

Liverpool.—Hall v. The Star Fire Insurance Co.—Martin.

Liverpool.—Bell, P. O. v. Earl Talbot—Martin.

Liverpool.—Sellers v. Dickinson—Watson.

Liverpool.—Jones and others, executors, v. Evans and another—Watson.

Liverpool.—Spotteswood v. Barrow and another—Serjt. Wilkins.

Liverpool.—Catto and another v. Sothorn—E. James.

Liverpool.—Bland v. Williams—Aspland.

Exeter.—Doe d. Bailey and another v. Staggott and another—Crowder.

Exeter.—Farley and another v. Creak—Crowder.

Exeter.—Brookes v. Roobee—Greenwood.

Bridgewater.—Pamfry v. Hawkins—Crowder.

Bridgewater.—Gilbert, jun., v. Martin—Bull.

Bridgewater.—Mallett v. Longden—Bull.

Dorset.—Waleshire v. Strong—Cockburn.

Bristol.—Hitchings v. Monk and ors.—Cockburn.

Bristol.—Lusk v. Russell—Pecock.

Dorset.—Doe d. Jones and others v. Jones and others—Welshy.

Ruthin.—Parry v. Thomas—Welshy.

Chester.—The Birkenhead, Lancashire, and Cheshire Junction Railway Company v. Fisher—Willes.

Middlesex.—Chilcote v. Wadsworth—Martin.

Middlesex.—Tewee v. Phillips and another—Watson.

Middlesex.—Simpkins v. Potheary—Barstow.

Middlesex.—Pudney v. The Eastern Counties Railway Company and another—E. James.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, JANUARY 19, 1850.

THE LAW OF BANKRUPTCY AND THE LONDON COMMITTEE.

AN article appeared in the last number of the Westminster and Foreign Quarterly Review, which has been subsequently republished in the shape of a pamphlet and extensively circulated, commendatory of the New Bankrupt Law Consolidation Act, laudatory of the London Committee for the Amendment of the Bankrupt Law, and all connected with that body, condemnatory of the law and its professors in general, and violently attacking the Commissioners of Bankruptcy in particular.

The writer, who, if he be not one of the London Committee, derives all his inspiration from that source, and adopts, without qualification, the theories, the fallacies, and the local and personal predilections and prejudices of its leading members, does not seem to have considered it in the least degree essential to a clear exposition of the principles advocated to have previously acquired any accurate practical knowledge of the subject discussed. The arguments relied upon, and the illustrations employed, are certainly not remarkable for either originality or novelty: they may be found for the most part in the various documents published from time to time by the London Committee, or in the evidence given by its members before Parliamentary Committees in the Sessions of 1848 and 1849. The objects with which the paper in question was connected, and is now industriously disseminated, are manifest. The gentlemen calling themselves "the London Committee" succeeded to a great extent in inducing the legislature to adopt and embody their peculiar views in "the Bankrupt Law Consolidation Act, 1849." The machinery by which this result was obtained, or the

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motives actuating those who put that machinery in motion, it is not now material to inquire into. The London Committee, at the close of the Session of 1849, took credit to themselves for having effected extraordinary improvements in the law, and conferred incalculable benefits on the commercial community. The members complimented and congratulated each other, and were evidently ashamed to find that the common-sense public waited to see how the measure worked before they erected statues of brass to those concerned in obtaining it. The act has now been in operation for three months, and it has produced universal disappointment. All that was objectionable in the old law has been retained, and much of the novelty introduced proves more objectionable than anything found in the law as it previously existed. Moreover, the act of last Session is so unskillfully, clumsily, and carelessly framed and put together, that it throws increased difficulties in the way of all concerned in its administration, and gives some probability to the rumour that a bill is already framed to repeal the act altogether. To acknowledge our incompetency to fulfil what we have undertaken is never a very grateful task, and often requires a degree of candour and magnanimity not always found in public bodies any more than in individuals. The London Committee make no such avowal. They anticipate that the Bankrupt Law Consolidation Act of 1849 will prove a total failure, and prepare for the result by crying out beforehand that its beneficent provisions are marred by the lawyers. That the mind of the reader may readily receive such an impression, the subject is introduced by the writer in the Westminster Review in the following happy strain of irony, worthy of a neighbouring metropolis during the short period when the principles of socialism were in the ascendant:—

"Law is the perfection of reason; this, none can doubt except those who mistake its real purpose, and suppose in their simplicity that it is intended to set wrong right, and to protect the weak against the strong who would injure them! Justice for the people, is only the means, and often but the pretence, gain for the professors of the law its real purpose; and the professors, especially the subordinate ones, are indifferent as to the means, so long as the end is made sure. If this be kept steadily in view, English law is indeed the perfection of reason. It yields vast incomes to its professors—18,000*l.*; 10,000*l.*; 6,000*l.*, a year are its prizes, while the people who sue for justice, even if they at last obtain the justice that they seek, are the worse for the benefit, which they sometimes find but an order of admission to the prison-house."

Those who, by a lucky *hit* realize large fortunes in Change Alley or Mincing Lane, are sometimes so liberal as to consider it a positive grievance, that men by the exercise of an arduous and laborious profession should earn wherewithal to live; it is monstrous in their view to find those selected from the first rank of the profession to administer the law, by reason of their sagacity, their integrity, and experience, placed in a position as regards income not far below a successful speculator in tallow, or cotton, or sugar. In the judgment and experience of this enlightened class, an independent professional man is a great public nuisance!

Returning, however, to the Bankrupt Law Consolidation Act, according to the pamphlet before us, if it does not work great miracles, it would have done so could we have enjoyed its advantages retrospectively. We are informed that—

"If the Bankrupt Consolidation Act had existed seven years ago, many of the calamities of 1847 might have been avoided. Merchants of high standing, bankers and bank directors, coerced by its stringent and most beneficent provisions, would have avoided the extravagance, the temerity, and the dishonesty which ended in their own ruin and disgrace. Such a bank as Messrs. Hammett's, would have closed their accounts years ago. Sir George Cockerell & Co. would have retired with honour 20 years before the period when reputation as well as fortune disappeared. And Bankruptcy Commissioners, taught their duty to the public by its well-defined clauses, would have avoided the disgrace to themselves of weeping over the self-inflicted 'misfortunes' of certain bankrupts—men, who, if they now appeared in Court, would be liable to prosecution for felony, or at best would be sent adrift with a third-class certificate, instead of being discharged with credit and compliments, as were Messrs. Alexander, Leslie & Co. by Mr. Commissioner Goulburn."

This indelicate and uncalled for allusion to the judgment of Mr. Commissioner Goulburn, in the case of Leslie, Alexander & Co., is, as already intimated, only the prelude to the wholesale attack on the Bankrupt Commissioners generally, with which the article concludes.

"If," (says this candid and modest writer) "the new act fail; the fault will be with the officers who administer it. The world should know something of these gentlemen, 12 in the country, with salaries of 1,800*l.*, a-year each, and six in London with 2,000*l.* a-year. In London a commissioner sits rather less than five hours a-day, for three days in the week. We will take it, therefore, that he works 700 hours a-year, much of which is mere routine, and that he is paid 3*l.* per hour, or 15*l.* for every day that he works. The Queen's judges, that is, the junior judges, work about seven hours a-day for more than nine months in the year. They therefore work more than double the time that the Bankruptcy Commissioners work; and surely as skilled labourers they are of higher value. The Chief Justice of the Queen's Bench is paid 8,000*l.* a-year, the Chief Baron of the Exchequer 7,000*l.*, the junior judges 5,000*l.*, this will make the pay of the latter but little more than 3*l.* per hour. Thus is Commissioner Sheppard paid as much as Mr. Baron Rolfe! But the judges incur from 500*l.* to 700*l.* a-year for travelling expenses. In making these remarks, there is no intention to advocate cheap justice, but there is reason in all things; and at the present price of the comforts and luxuries of life, it should be remembered, that not to reduce the salaries of public officers is to advance them, seeing that every year, 1*l.* or 1,000*l.* will buy more and more of all commodities. The salaries of the Commissioners of Bankruptcy have been lately advanced from 1,500*l.* to 2,000*l.*, they would be well paid at 1,000*l.* a-year."

The very persons who only a few months since proposed to confer the most arbitrary and unconstitutional powers on the Commissioners of Bankruptcy, now suggest that their emoluments should be diminished one-half, totally disregarding the fact that those who pay reduced prices usually obtain inferior workmen. The following estimate is given of the expense of maintaining the Court of Bankruptcy, which we have reason to think is grossly exaggerated:—

"The costs of the Bankruptcy Court is altogether 100,000*l.* a-year; the number of cases may be taken as 1,300; the costs of the establishment will be therefore 77*l.* on each case: to which must be added the costs incurred by the creditors out of their own pockets, or out of the estate, at least 150*l.* more. Thus, the charges of this salvage Court on the profits and industry of the country are, at least 227*l.* a case; but the oppressive nature of the system will be more apparent when it is considered that a

seventh part of the estates pay no dividend at all. Now, in the Superior Courts, a verdict may be obtained in many cases for 80*l.*, 90*l.*, or 100*l.*; but here a charge of 227*l.* is made to recover on adjust, not a whole claim, but a miserable dividend, the average of which is 3*s.* in the pound. The total cost of justice in these Courts is, therefore, as near as possible, 300,000*l.* a-year."

The article winds up with the following tirade,—the virulence, coarseness, and disgustingness of which are so manifest that the statements carry with them their own refutation:—

"The demoralising effects of much pay and little work, is shown in the conduct of the Commissioners respecting this act. They seem to have set their faces against it, and doggedly to oppose its efficiency. Mr. Commissioner Evans has complained in open Court, that the act is badly prepared, and that the Commissioners were not consulted. Surely, in the reform of that portion of the law which these men have been administering for so many years, having at their fingers' ends all its weak points, as well as all its strong ones, they ought not to have awaited the invitation, but through every stage of the bill they ought to have been ready and zealous that nothing should go wrong that their experience could keep right, and after 10, 20, or 30 years, these Commissioners must have been *blockheads* indeed, if they could not have devised a scheme of bankruptcy-reform near unto perfection. But how little they knew of the matter can only be believed, by reading their evidence before the Lords' Committee, 1848. We wish we had space to extract a few portions. They were strongly against restoring arrest under *mesne process* and one of them asserted that Mr. Serjeant Stephen, who wrote a most able defence of arrest many years ago, had 'seen cause to alter his opinion'; two days afterwards there came a letter from Mr. Serjeant Stephen, distinctly denying the assertion, and declaring that all his subsequent experience had more and more confirmed the correctness of his opinion. Men paid 2,000*l.* a-year for 15 hours work in a week, were called upon by every sense of public duty and private reputation, to lend the most hearty assistance during the progress of the bill.

"Again, the act came into operation in October last, and it remains in partial operation to the present moment, because the rules of Court are not ready. The moment the act passed, the Commissioners should have set about their rules; there should have been no delay, not even of a day, so that as soon as it came into force the rules should have been ready. There should be discipline in the court as well as the camp. What would be said of an officer in the army, whose regiment was to march at 10 in the morning of a given day, and when the hour arrived nothing was prepared?—he would be subject to court-martial. What would one of the Commissioners say, if he

found the train to take him to Brighton, at a given hour, not ready, no water, no cake, no engine, nothing but motionless, empty carriages? The attention to their duty that is inexorably required of distinguished officers in the army, and of the humble servants of a railway, should be as inexorably required of men who are paid 2,000*l.* a-year for three days' work a-week, and on whose conduct depends the preservation of the time, the property, the character, the comfort and security of an indefinite number of people. Truly, indeed, did one of them exclaim, 'This (old) Bankruptcy Act has demoralized me!'

"In these remarks, we make entire and most honourable exception of Mr. Commissioner Fane, who has for years been labouring to amend the law, and who has assiduously aided all persons who were labouring with him. Mr. Fane is one of the most industrious and consistent law reformers, who has ever lent a hand in the Augean stable. Lord Brougham has also worked nobly, but he must go on in wallowing; he has many errors still to correct. The power of arrest must be restored."

We shall only add, that if Mr. Commissioner Fane feels flattered by the terms in which he is mentioned in the last paragraph, we should feel much less respect than we are disposed to do either for his taste or his judgment. His utility as a Bankrupt Commissioner most certainly will not be increased by associating himself with persons so injudicious and unscrupulous as those whose sentiments are expounded in the pages of the Westminster Review.

NOTICES OF NEW BOOKS.

The Joint-Stock Companies' Winding-up Acts, 1848, 1849, (11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108.) with Notes; and Acts of Parliament having reference to these Acts; the various Cases decided under the Act of 1848; together with Forms and Precedents adapted to Practice, and Directions as to the course to be adopted in the Master's Office. By EDWARD BOURNE LOVELL, Esq., of the Middle Temple, Barrister-at-Law. London: Wildy and Sons. 1850. Pp. 498.

THE Joint-Stock Companies' Winding-up Acts have not only created a large amount of new business in the Court of Chancery, but have given occasion to the composition of several new books, incorporating the statutes, accompanied by notes and practical directions. The present author, Mr. Lovell, is entitled to his fair share of attention, and we proceed to lay before our readers the plan of his work and the scope of his exertions in expounding and assisting

in the due operation of this new department of law and practice. Mr. Lovell says:—

"Having been during a former period of my life intimately acquainted with the joint-stock system, I have viewed with peculiar interest the attempts from time to time made by legislative enactment to devise some adequate remedy for the difficulty inseparably connected with such undertakings,—that of providing means whereby the claims arising between the partners themselves, might, on the dissolution and winding up of such undertakings, be adjusted, without the necessity of resorting to the lengthened and expensive routine of an ordinary suit, and its attendant consequences.

"The object so much to be desired has been in a great measure attained, and that by a machinery though in most respects new, yet as comprehensive as it is simple.

"The interest which I took in the measure induced me, on the passing of the act of the 11 & 12 Vict. c. 45, to commence a synopsis of that act, interspersed with marginal notes, having reference to such acts of parliament, and to the existing practice of the Court of Chancery, where it appeared to me reference to such acts and practice would be useful to those who might have occasion to resort to the provisions of the Winding-up Act.

"It was my intention that the work to which I have alluded should have made its appearance in the autumn of last year, but finding a Treatise upon the Act of 1848 was on the eve of publication, and that from the pen of one in every respect better qualified than myself to appreciate the subject, I was induced to abandon my original intention, and I cannot but congratulate myself on the resolution I then formed, inasmuch as the able Treatise upon the Winding-up Act of 1848, by Mr. Ludlow, which was shortly afterwards published, left nothing to be supplied.

"Since that period, however, the passing of the amended act of 1849 induced me to resume the subject, upon the basis I had formerly prescribed to myself, under an impression, though perhaps a mistaken one, that a work embodying the original and amended acts, in the order in which the original, amended, and supplementary clauses have application to each other, would not prove unacceptable.

"I have in the Appendix (A) given the two acts at length, together with the 7 & 8 Vict. c. 111, the 8 & 9 Vict. c. 98, and the 9 & 10 Vict. c. 28; for although the Winding-up Acts have immediate application to particular sections only of the three last-mentioned acts, yet it appeared to me desirable the practitioner should have all the sections of those acts before him, so as to afford him at all times ready access to their various provisions.

"The notes which I have from time to time made of the numerous cases which have arisen under the act of 1848, with other valuable assistance afforded me, enables me to supply the particulars of most, if not of all, the decisions which have been pronounced up to the present time.

"I have also been enabled, through the kindness of friends, (amongst whom, in justice to my own feelings, I would particularly mention Messrs. Hume and Bird,) to give a series of forms and precedents taken from and adapted to actual practice, together with short practical directions as to the course to be adopted in the Master's Office on obtaining an order absolute under the Winding-up Acts."

The author, in his introduction, treats of the general scope and intention of the acts, and adverts to the various leading cases relating to large companies or partnerships, particularly to *More v. Malachy*, 1 Myl. & Cr. 559; *Van Sandau v. Moore*, 1 Bam. 441; *Walworth v. Holt*, 4 M. & Cr. 619; *Richardson v. Larpent*, 1 Y. & C. C. C. 507; *Harvey v. Bignold*, 8 Beav. 343; and *Mosley v. Alston*, 1 Phil. 790; illustrating, as those cases do, the difficulties of obtaining due relief in the former state of the law, and showing the necessity of its alteration. He then points out the several companies included in the new statutes, and in various chapters describes the course of proceeding before the Master and the appeal to the Court.

The proceedings to be adopted in the Master's Office are thus stated:—

"An office copy of the order absolute must be left at the Master's Office, and also a fair copy of the petition and affidavit in support. All papers carried into the Master's office must be written on uncut foolscap paper, with a guard margin.

"On attending the Master with the notice, he will appoint who shall attend before him, (*vide* p. 95 and following,) and he will name the day for appointing the official manager, (which must be within fourteen days of the first advertisement, *vide* p. 81 and following,) and he will sign the advertisement for that purpose, (No. 3, Sch. Act 1848, p. 270,) and also the advertisement for creditors to come in and prove their debts, (No. 12, *ibid.* p. 274).

"These advertisements must be prepared by the solicitor (in duplicate) before he attends the Master.

"The advertisement for official manager must be advertised in two successive *Gazettes*, and in such two or more newspapers as the Master shall direct, (*vide* p. 81 and following). The advertisement for creditors must be advertised once in the *London Gazette*, within ten days after the order absolute is brought in to the Master's Office, (*vide* s. 72, Act 1848, p. 131).

"If it be desirable, the Master will also direct this advertisement for creditors to be inserted in such of the London and country newspapers as may appear desirable, but if there be no difficulty about the amounts of the debts, the official manager may prepare a list, and get it signed by the Master or allowed; and

save the expense of proving them before the Master by writing to each creditor stating that the amount of his debts admitted."

"Previous to the day appointed by the Master for proceeding under the order, it will tend to prevent delay if the following documents are prepared:

"An affidavit of the advertisement on the contributories:

"An affidavit showing the state of the assets of the company as near as it can be ascertained.

"An affidavit of the suits and actions pending by and against the company, their nature and state of proceedings.

"An affidavit of the debts due from the company, their nature, when payable, and what (if anything) has been done by the creditors towards their recovery.

"A proposal of official managers or manager, with the names of their or his sureties.

"All parties necessary to attend the Master to attend without warrant."

On the important subject of *Costs* and *Fees*, to which the 15th chapter is devoted, Mr. Lovell thus writes:—

"The general costs of winding up the estate, and the costs of proving debts, and of trying issues, and of all other matters in which creditors or any particular contributories or classes of contributories, or alleged contributories of a company, are interested, are at the discretion of the Master, and will be paid either out of the general estate of the particular company, or out of a portion of its general estate, or may be debited or credited to any individual contributory or classes of contributories, or will be subject to such set-off as the Master from time to time directs. 11 & 12 Vict. c. 45, s. 103.

"The costs of all proceedings before the Court are in the discretion of the Court. *Ib.* s. 104.

"All costs are to be ascertained by the Master, or to be taxed, settled, and adjusted by such persons as he may direct. The Taxing Masters of the Court are to tax all such costs as the Master directs to be taxed by them, and to make their certificate of such taxation in the usual manner. *Ib.* s. 105.

"Costs ordered to be paid may be recovered in the same manner and by the same or any such process as costs ordered to be paid by a party under an order or decree made in a suit pending in the Court. *Ib.* s. 106.

"The Lord Chancellor, with the advice and assistance of the Master of the Rolls, or of the Vice-Chancellor, may from time to time fix, regulate, and vary a table of fees to be paid and charged in respect of proceedings, orders, and other matters. *Ib.* s. 107.

"In lieu of all fees to be received or charged in aid of the suitors' fee fund in respect of proceedings, orders, or other matters under these acts, the interim or provisional manager, or the official manager of the company, the affairs of which shall be wound up, are to pay into the Bank of England, with the privacy of the Ac-

countant-General of the Court of Chancery in England, or Ireland respectively, to be there placed to the credit of the suitors' fee fund account, such amount, by way of percentage, as the Master certifies upon the monies received by the official manager, and paid or divided amongst the creditors or the contributories of the company in winding up the affairs thereof, not exceeding the sums following; that is to say,

"Upon the first monies so paid and divided, not exceeding 50,000*l.*, the sum of 10*s.* per 100*l.*:

"Upon all further monies above 50,000*l.*, and not exceeding 100,000*l.*, so paid and divided, the sum of 5*s.* per 100*l.*:

"Upon all further monies above 100,000*l.*, and not exceeding 200,000*l.*, so paid and divided, the sum of 3*s.* 4*d.* per 100*l.*:

"Upon all further monies exceeding 200,000*l.*, so paid and divided, the sum of 1*s.* 3*d.* per 100*l.*:

"The Lord Chancellor of Great Britain; or the Lord Chancellor of Ireland may, by such rules or orders as are mentioned in sect. 123, Act 1848; alter and vary from time to time the rates specified in that clause. 12 & 13 Vict. c. 103, s. 35.

The volume also comprises the statutes, cases, and forms applicable to the subject..

EXCLUSIVE AUDIENCE OF THE BAR. IN INSOLVENCY CASES IN THE COUNTY COURTS.

ONE of our contemporaries, a zealous and able advocate of the interests of the junior Bar, has twice advised his brethren not to persist in the claim to exclusive audience in insolvency cases in the County Courts. This is good advice. It would, however, have come with better grace if it were given on high and disinterested grounds. It is recommended; we understand, not to press the matter, because the cases to be advocated are few in number, and of small importance.

It is true, that whilst the Insolvency Commissioners went the Circuits and would hear none but barristers, the number of opposed cases was small; but this was on account of the great expense of an opposition, where a brief was to be prepared and a fee paid to counsel. Few, also, we venture to say, will be the opposed insolvency cases in the County Courts, if the Bar only can be heard. In fact, the object of the Legislature to have these cases conducted with economy and efficiency—to have frauds detected and punished—will fail altogether if the claim of the Bar should succeed.

An inquiry, through a solicitor, into the affairs of an insolvent, may be made for the fourth part of the expense of employing counsel. The solicitor, attended by his client, may examine the schedule of the insolvent, take notes for the investigation in Court, and by a few apt questions elicit the truth or put the case in a course of further inquiry. It can be abundantly proved that the insolvents in the country, whose debts, though sometimes rather numerous, were of small amount individually, went unopposed, because it was not worth while to incur an expense of 5*l.* or 6*l.* to employ counsel.

The case, however, does not rest upon the expediency of *permitting* attorneys to conduct these cases in the County Court, but is due to them of *right*, as advocates in the County Courts in all matters delegated to that tribunal, in like manner as attorneys are heard before the Judges at chambers, before the Masters in Chancery, and on writs of trial and inquiry, though they could not be heard in the superior Courts from whence the proceedings originate. And this will be in accordance with the statutory right they possess under the Bankruptcy Laws, and under the ancient statutes, authorising the suitors to appear by attorney.

So far as the important district of Yorkshire is concerned, we trust, the question will soon be set at rest. According to the convenient arrangement made by Mr. Sergeant Dowling on that Circuit, the insolvency cases are heard on the last Saturday in each month (see p. 199, *ante*). The question, therefore, will be heard on the 26th January, and decided on the 23rd February.

We have heard that at Bristol and Gloucester only have the Bar succeeded in their claim. In all the other County Courts, we believe that either no claim has been made, or, if made, disallowed.

CHEAP LAW.—DEAR INJUSTICE.

To the Editor of the Legal Observer.

SIR,—I have perused with pleasure your recent articles, as well on the general working of the New County Courts, as on the rumoured intention of the commissioners or judges to preclude attorneys from practising as advocates, by granting, not merely pre-audience, but an exclusive preference to the Bar. In other words, these sage distributors of what they are pleased to call "cheap law," but which I for one have found to my own and clients' cost to be "dear injustice," would insist that every luckless wight who has recourse to them shall "will he nill he" pay a *barrister* at least

1*l.* 3*s.* 6*d.*, for aid which any competent attorney could afford to render him for 13*s.* 4*d.*

It is not alleged, I fancy, by the warmest advocates of these little Courts, that any case has yet arisen, or is likely to arise, which has not been, or might not be, settled by the combined sapience of "His Honour" and the two attorneys. In fact, as Moses in Leviticus provided, that a case too difficult for the judge of tens should be remitted to the consideration of the judge of fifties, and so on, ascending gradually till in the last resort the litigants approached himself and Aaron, so express provision has been made by parliament, that cases of importance, when, if ever, any such arise, may be transferred at once from the County to the Superior Court. Such "learned gentlemen," as the wiseacre who disgraced Fraser's pages with his "Avatar of Attorneys," a few weeks ago, may indeed exult at the bare chance, though but a *remota possibilitas*, of picking up a guinea now and then,—may, if nephew, cousin, or "friend" of the presiding judge, any one of which relationships "sounds," as Saunders Fairford very well expresses it, "as like being akin to a commissionership" as a sieve is sib to a riddle," gain the same end by "prophesying smooth things," and what is technically called "earwigging," unless indeed he should prefer what is perhaps the better plan—it looks so independent!—to take a leaf from Roger North's quaint book, and learn "to teize as the way is, to get credit with the countrymen, who would be apt to say, 'look what pains he takes!'" But surely any well-educated and really learned counsellor may employ his time far better than in chasing such "small deer" as these. I, sir, have, for my sins, had occasion several times to enter County Courts, as well in London as in the provinces, and could from experience furnish a long string of droll reminiscences to your readers, but, so far at least as 99 cases out of every 100 are concerned, Shakspeare's Menenius Agrippa has sketched them all with a master's hand—"You wear out," says he to the commissioners of ancient Rome, "a good wholesome forenoon in hearing a cause between an orange-wife and a posset-seller, and then adjourn the controversy of threepence to a second day of audience." Let me not be misunderstood,—the orange-wife and posset-seller have an unquestionable right to see their dispute decided in conformity with the laws of England, but to make them pay 1*l.* 3*s.* 6*d.* each for it,—would be, in fact, an egregious mockery of justice. The average value of the sums contended for in these little Courts is, perhaps, over-estimated at from 3*l.* to 50*s.*; must two learned gentlemen with wigs and gowns be "concerned in such a

* The extreme fee allowed by act of parliament is but 15*s.*

The English "commissionership" is nearly tantamount to the Scottish "sheriffdom,"—the latter is, however, the expression used in *Redgauntlet*, to which our correspondent L. alludes.—ED. L. O.

controversy" for each ill-fated disputant? The barristers would be indeed ill-paid for all they underwent; but, sir, the orange-woman and the posset-seller don't require such exalted champions, and "the service," as the late George Rose would have said, "won't bear it." You are aware, sir, doubtless, that when rescued by a bystander from the river, he tipped his preserver a guinea,—

Some men, in the joy of the moment, 'tis true, Would have readily paid down a dozen or two, But George Rose was not such a ninny, He knew how to value his life to a hair, And gave—"just as much as the service would bear."

Can it be contended, then, that the services of a County Court counsel in a case of *"Caban v. Costermonger,"* are of higher worth than the life of a Chancellor of the Exchequer—the latter estimated at his own valuation? Surely no! We may regret the absence of forensic oratory and bar costume in these pie-poudres, but after all, as poor dear George Rose observed, "the service will not bear it."

By the way, can you tell me what has become of your old friend "Legalis?" How did he speed at the ———ton County Court in August last?

L.

ATTORNEYS AND SOLICITORS OF IRELAND.

REPORT OF THE COMMITTEE OF THE SOCIETY, NOVEMBER 27, 1849.

At the meeting of the Society of the Attorneys and Solicitors of Ireland, held in the Solicitors' Rooms on Saturday, November 27, 1849, William Goddard, Esq., President, in the Chair, the following report of the Committee was read by the Secretary, and adopted:—

Your Committee, in submitting to the society a statement of the several matters which have occupied their attention during the period they have been in office, which has extended to one year and a-half (in consequence of the dissolution of the general meeting of the society, held on the 26th of November, 1848), have to report—

1. That the most important subjects with which they were engaged, and which occupied the attention of former committees of this society, were the Taxing Master's Office of the Court of Chancery, and the Bill to amend the Laws relating to Solicitors of Ireland, which was introduced into parliament at the suggestion of the society; and they have the pleasure to congratulate the society and the profession, that in both instances their labours have been successful; and that, owing to the exertions of your Committee, and of a deputation of two of their members in London, in 1848, an act of parliament was passed, for the appointment of two additional Taxing Masters for the Court of Chancery; and the future appointment of Taxing Masters was confined to members of the profession. They have also to state, that

during the last session of parliament an act was passed to amend the Laws relating to Attorneys and Solicitors in Ireland, respecting the Taxation and recovery of Costs; the provisions of which act your Committee expect will prove of very great advantage to the profession.

Your committee have to report that the amendment suggested by them, and by three former committees of this society, in the act 7 & 8 Vict. c. 90, for the Registration of Judgments, viz., that the registrar should give a certificate of the registration of a judgment, or other security, has at length been carried into effect by the act 11 & 12 Vict. c. 120; and that other important and useful amendments have been made in the Judgment Registration Act, and particularly an authority given for the registration of satisfactions of judgments and of the cancelling of bonds to the Crown and vacating recognizances.

A Select Committee of the House of Commons having been appointed during the last session of parliament, to inquire into the state of the law respecting the appointment of receivers under the Court of Chancery, and the Equity side of the Court of Exchequer in Ireland, and the effect of the present regulations of those Courts on the management of estates under their control, your committee prepared suggestions for an improved practice on the subject, which they forwarded to Mr. Hamilton, Mr. Napier, and Mr. Sadleir, to be laid before the Parliamentary Committee, and which (if adopted) would, in the opinion of your Committee, obviate many of the evils now complained of, and considerably diminish the expenses attending the management of estates by receivers under the Courts. They recommend that the matter should be followed up by their successors, and the attention of the Lord Chancellor and Master of the Rolls called to those suggestions, and such others as may occur to the new committee to offer.

A question having been raised as to the admissibility of members of the profession to be appointed receivers under the Court of Chancery, and the subject having been brought before the Lord Chancellor, on an appeal from an order of the Master of the Rolls, your committee considered it advisable to appear by counsel on the appeal, to protect the rights of the profession; and counsel having been heard thereon on behalf of this society, and the question having been fully discussed, the Lord Chancellor was pleased to reverse the order of the Master of the Rolls, and thereby confirmed the principle of the admissibility of solicitors to be appointed receivers.

Your committee had under their consideration the Bill to facilitate the Sale of Incumbered Estates in Ireland, which passed into a law in 1848, upon which they prepared and had printed and circulated among members of both houses of parliament, observations, which, in their opinion, pointed out very serious objections to many of its clauses. The bill, however, was passed, but has since, in effect, been superseded by the act passed during the last

session, and by the appointment of commissioners thereunder for the Sale of Incumbered Estates.

"Since this last act has come into operation, your committee have had under consideration the schedule of fees framed by the commissioners; and availing themselves of the permission given, they have prepared a memorial on the subject, which they hope will be favourably received, and an increase made in some items in the schedule, which your committee consider very inadequate remuneration for the duties to be performed.

"Your committee regret that the suggestions contained in the several memorials presented from time to time to the judges, for an assimilation of practice in the three Law Courts, have not as yet been carried into effect; but they have lately been informed that it is probable the subject will engage their lordships' attention after the sittings of the present Term; and as the subject is one upon which the profession have long been very desirous to obtain the opinion of the judges, your committee trust their successors will persevere in endeavouring to have it accomplished.

"The act lately passed for the amendment of the Law of Bankruptcy in Ireland, was carefully considered by your committee on its being first printed, and its provisions appearing likely to be beneficial to the public, and not injurious to the interests of the profession, your committee did not take any steps in relation thereto.

"A bill having been introduced into the House of Commons during the last session of parliament, for making policies of assurance on lives assignable at law, your committee examined its provisions, and forwarded several suggestions to the promoters of it, which they considered would be improvements, and which were attended to, and the bill passed the House of Commons in an amended form, but was postponed to a future session in the House of Lords.

"Your committee had under their consideration the bill introduced into parliament in 1848, for converting the renewable leasehold tenure of lands into a tenure of fee, as to which they offered some suggestions, which, in their opinion, would tend to the improvement of the measure in some very important particulars. The bill was not then passed, but during the last session a bill on the subject was introduced into the House of Lords, and has received the Royal Assent, in which the suggestions of your Committee are substantially embodied, and the objectionable matter omitted.

"Your committee, in the month of February last, presented a memorial to the judges of the Law Courts, calling their lordships' attention to several alterations made by recent statutes in relation to proceedings by ejectment, whereby additional duties are imposed on attorneys without any remuneration being allowed for the same, and praying their lordships to direct the taxing officers to allow, on the taxation of ejectment costs, the like fees for the notices re-

quired by those acts as we are now allowed for other notices by the table of fees.

"Instances have come to the knowledge of your Committee of apprentices serving under unstamped indentures, and even of applying, under such circumstances, to be admitted as attorneys, long before the expiration of the period for which they were bound, your committee felt imperatively called upon to oppose such applications, where the full period of apprenticeship had not been served, and where such admission was sought without sufficient or substantial grounds being offered for infringing the established rules regulating apprenticeships; and they have to state that they opposed with success the application of a gentleman to be admitted a solicitor, who had not previously been admitted an attorney.

"A case of a very peculiar and complicated nature, and one of great importance to the profession to have exposed, is deserving of particular attention, as being an instance of the extent to which the greatest abuses may be perpetrated by unqualified persons being employed to act as town agents for country practitioners.

"In the case referred to, the party who lives in Dublin had, on five judgments in the Court of Exchequer, issued simultaneously no less than 29 executions against only three defendants, directed to the sheriffs of various counties; and some of the sheriffs not having returned the writs in time, the person alluded to, at the earliest moment possible, obtained conditional orders for fines against them, served bills of costs of the conditional orders, and in eight instances received payment of such costs. This party had, in carrying on these proceedings, used the names of two attorneys, whose offices were registered at his house, and whose business he was in the habit of transacting, but who, on being examined in Court, altogether repudiated the proceedings, and denied having authorized their names to be used therein. After a searching investigation in open Court, an attachment was awarded against the party by the Court of Exchequer, with costs.

"Your Committee being of opinion that cases of the foregoing description are highly injurious to the profession and the public, suggest to the society, whether it would not be conducive to the interests of the profession that the practice of attorneys, residing in the country, employing persons who are not attorneys to act as their town agents should be discountenanced; and that in every case the country attorney or solicitor, who does not hold an office in Dublin, should employ, as his town agent, a qualified attorney or solicitor, (such being invariably the practice in England).

"Several additions have been made to the library of the society during the past year—a considerable sum having been expended in the purchase of books and maps.

"Your Committee have to acknowledge the presentation to the solicitors' rooms, by the printers of the *Press*-newspaper, of two copies

of each number of their publication since their commencement; and, being of opinion that that paper is worthy of support, from frequently containing valuable reports on legal subjects, they have directed that for the future it should be supplied to the room at the expense of the society.

"In concluding their report, your Committee request the attention of the society to a suggestion, which they deem well worthy of consideration, and which, if acted on, would be found not merely a matter of great accommodation to the society, but would likewise necessarily tend to add to the number of its members—viz., if, during term time and the sittings after, a practice were adopted of the members assembling each day at the solicitors' rooms at some given hour (say three o'clock), whereby much time might be saved which is now lost by parties searching for each other through the various courts and offices. This plan, if adopted, your Committee feel assured, would give general satisfaction, and effect a great saving of valuable time."

DEFENCE OF THE TAXES ON JUSTICE.

To the Editor of the Legal Observer.

SIR,—I am far from agreeing with you and many of your Correspondents, although supported by the authority of Bentham, on the subject of Taxes on Justice, as it is called.

I admit that the expenses of the criminal jurisprudence of the country should be paid by the country or the county, but as to the civil jurisprudence, I do not see why the almost universal principle, that those who use a thing should pay for it, is to be departed from in this case. The man who uses or is supposed to use a church, pays for its support: the man who uses a chapel, or a railway, or a turnpike road, or a theatre, or a cab, or an omnibus, pays for it. And why should not the man who uses or compels the use, or has the benefit of a Court of Justice, pay for its support also?

You and I may be peaceably disposed persons, paying for everything as we have it and avoiding litigation; but a man in Cornwall, whom neither of us ever saw or heard of, may be of an opposite character. He brings an action or suit against his neighbour to enforce an unjust claim, but is defeated in his unrighteous attempt. Why should he not pay the full forfeit of his improper proceeding. Another man in Norfolk justly owes a debt which he refuses to pay—his creditor brings an action against him, and he, the debtor, is condemned to pay the costs by his unjust defence. And why not? or why in either case should you and I be called on to contribute towards the expenses of this unnecessary litigation, which we should do, if, as proposed, the expenses of our judicature were paid by the state? We might as well, as it appears to me, be required to contribute towards the solicitor's bill of costs on both sides—or to a railroad, theatre, or omnibus, that we never saw or heard of.

Mus.

NOTES OF THE WEEK.

MR. DIMES' CASE.

THE question raised upon the return of a writ of *habeas corpus*, as to the validity of an order for the committal of Mr. Dimes for contempt of the Court of Chancery, made by Lord Cottenham, in a case in which his lordship, as a shareholder in the Grand Junction Water-works Company, is alleged to have a pecuniary interest, has, as might have been expected, excited considerable interest in the professional circles. The point upon which the Court of Queen's Bench is called upon to decide is obviously of great importance, as connected with the administration of justice generally; and we deem it fortunate that it should have arisen in a case where the judge stands in such a position as regards circumstances and character, that no one conceives it to be possible, that his judicial determination could have been influenced in the remotest degree by any consideration of personal interest. The merits of the abstract principle involved in the case, when fully discussed, shall be submitted to our readers.

The Court has decided that the order of committal, though signed "C. C." as the Lord Chancellor's initials, was the act of the Vice-Chancellor, and that he had jurisdiction in the case. The prisoner was therefore remanded.

EXPECTED PROMOTIONS.

It is tolerably notorious, that twelvemonths since, when the last batch of Queen's Counsel were created, several members of the Bar, who were candidates for the honour, were informed that their applications must not be considered as rejected, but only postponed. Some disappointment is felt, that no communication has since been made to those who consider themselves entitled to silk, more especially as the Spring Circuit is approaching.

LAW APPOINTMENTS.

The Queen has been pleased to appoint Henry Samuel Chapman, and Sidney Stephen, Esqs., to be Judges of the Supreme Court of the colony of New Zealand. Jan. 15.

Her Majesty has also been pleased to appoint Joseph Michael O'Neill, Esq., to be her Majesty's Advocate for the colony of Sierra Leone. Jan. 15.

Her Majesty has further been pleased to appoint Algernon Montagu, Esq., to be Stipendary Magistrate for her Majesty's settlement in the Falkland Islands. Jan. 15.

HILARY TERM EXAMINATION.

We have to remind the Candidates that they should be punctual in their attendance at the Hall of the Incorporated Law Society on Tuesday next, at half-past nine, in order to take the seats assigned to them before 10 o'clock, when the door will be closed. One of the Masters of the Queen's Bench will preside. We are informed that testimonials have been left by 97 Candidates.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Stevens v. Keating. Jan. 16, 1850,

TAXATION.—COSTS OF DEFENDANT OPPOSING UNSUCCESSFULLY MOTION FOR INJUNCTION WHERE THE PLAINTIFF'S BILL IS DISMISSED.

Held, reversing the order of the Vice-Chancellor of England, that the Master, on taxation, had rightly allowed the defendant his costs of opposing an order for an injunction, though the injunction was granted, and of the Lord Chancellor's order for dissolving the injunction where the right at law had, in the first place, not been established in compliance with the special directions, and the verdict upon the trial had been given for the defendant; and the bill accordingly dismissed with costs for want of prosecution.

The dictum of Sir John Leach in 1 Sim. & Stu. 357, as to costs of party opposing unsuccessfully, overruled.

THIS bill was filed to establish a patent right, and an injunction had been granted by the Vice-Chancellor of England on 18th Jan., 1847, without the legal right having been first established at law, from which an appeal was presented, but the injunction had been confirmed—the action at law to be brought without delay. The action not having been brought, the injunction was, on the 29th July, 1847, dissolved, and the defendants directed to keep an account. (2 Phill. 333.) The trial then took place, but a verdict having passed for the defendant, the specification in the plaintiff's patent being insufficient, the bill was dismissed by the Vice-Chancellor, with costs; on 18th Jan., 1849, for want of prosecution. Upon the taxation, the defendant claimed the costs of the motion for an injunction which he had unsuccessfully resisted before the Vice-Chancellor, and the costs of obtaining the Lord Chancellor's order dissolving the injunction, which were accordingly allowed by Master Martineau. The Vice-Chancellor having, on petition, sent the taxation back for review, and disallowing the costs of the motion for the injunction, this appeal was presented.

Stuart and Glasse for the appellant; *Roll and Hardy*, for the respondent, cited the memorandum promulgated by Sir John Leach in 13th April, 1823, and reported in 1 Sim. & Stu. 357, to the effect "that the party making a successful motion is entitled to his costs, as costs in the cause; but the party opposing it is not entitled to his costs, as costs in the cause;" and that "it was therefore the duty of the Court, whenever by reason of special circumstances it was not the intention of the Court that these rules should apply, to give particular directions with respect to the costs."

The Lord Chancellor said, that the practice as stated in 1 Sim. & Stu. operated most unjustly in depriving a defendant of the costs of

proceedings, according to the result of the cause, improperly instituted against him.

Upon making inquiries, it appeared that the course pursued by Master Martineau was the usual practice of the Court, and the order of the Vice-Chancellor was therefore reversed.

Knight and another v. Majoribanks and others.

Nov. 14, 16, 17, 19, 20, 26, 1849.

DEED OF ASSIGNMENT.—SETTING ASIDE.—**GROUNDS.**

Held, affirming the decree of the Master of the Rolls, that the mere pecuniary obligations to the assignees of the assignor, without proof of fraud on the part of the assignees or inadequacy of consideration, is insufficient to set aside a deed of assignment of the assignor's interest in a partnership.

THIS bill was filed by Colonel Latour and Mr. Knight, trustee in an assignment from Commissioners, of Bankruptcy, to set aside two deeds executed by Colonel Latour in August, 1829, and May, 1836. It appeared that a grant of 20,000 acres of land in New South Wales, and 20,000 acres in Van Diemen's Land, had been granted, in 1825, to "The New South Wales and Van Diemen's Land Establishment Company," for certain agricultural purposes, and that the plaintiff, Latour, became a member of the concern, together with the defendants, Messrs. Majoribanks, Ferrers, and three others. Latour, being in August, 1829, indebted to the company, executed a deed depriving him of all interference in the affairs until such debts were paid, and in May, 1836, having been previously declared a bankrupt, and being engaged in litigation to supersede the commission, he assigned all his interest to the other parties in consideration of the sum of 250*l*. A bill was filed in 1839, to set aside these deeds on the ground of fraud, misrepresentation, pressure, and inadequacy of price, but the Master of the Rolls dismissed the bill with costs, whereupon this appeal was presented.

Elderton, Sir F. Knowles, and Prior, for the appellants; *Turner, R. Palmer, and Cotton* for the respondents.

The Lord Chancellor said, that the evidence did not show that any direct or wilful fraud had been practised on Colonel Latour, nor that the price was inadequate. It appeared that he had as ample means of ascertaining the condition of the affairs as any other member, and had acquiesced in the performance of the covenants of the deeds. His being under pecuniary difficulties was insufficient alone to set aside the deeds, and the appeal would be dismissed with costs.

In re Payne, ex parte Spooner. Nov. 26, 1849.

PENSION OF DISTRICT BANKRUPTCY COMMISSIONER.—INSOLVENT.—**ASSIGNMENT.**

Held, reversing the order of the Vice-Chan-

cellor² Knight Bruce, that the Court has not power, under the 5 & 6 Vict. c. 122, to order the Accountant in Bankruptcy to pay to the assignee of an insolvent his pension as a Commissioner of Bankrupts, awarded by the Lords of the Treasury under the 58th section.

THIS was a petition on behalf of Mr. James Spooner, the assignee of an insolvent, for an order upon the Accountant in Bankruptcy to pay quarterly, as it accrued, to the petitioner, the compensation of 199l. a year, awarded by the Lords of the Treasury under the 5 & 6 Vict. c. 122, s. 58, to the insolvent, who had been appointed Bankruptcy Commissioner in the Bristol district under the 1 & 2 Wm. 4, c. 56, but who was superseded by the former statute. A case had been sent to the Barons of the Exchequer by order of the Vice-Chancellor Knight Bruce, and the petitioner had been held entitled to the pension. It appeared that the insolvent refused to consent to this order.

Faber in support.

The Lord Chancellor said, that the 5 & 6 Vict. c. 122, only conferred the power of enforcing the award of the Lords of the Treasury, but not to assign the pension, and therefore dismissed the petition.

Cole v. Scott, Nov. 29, 1849.

WILL.—CONSTRUCTION.—“NOW.”—AFTER-ACQUIRED ESTATE.

Held, affirming the decision of the Vice-Chancellor of England, that a devise of all the freehold, copyhold, and leasehold estates “whereof I am now seised or possessed,” did not pass after-acquired property.

JOHN COLE, by his will dated in April, 1843, devised all his freehold, copyhold, and leasehold estates “whereof I am now seised or possessed in any manner howsoever,” to his nephews F. C. Scott and Henry Scott, their heirs, &c., on trust, &c.; and in a second clause he bequeathed all such manors, &c., “as are now vested in me, or as to the said leasehold premises as shall be vested in me at the time of my death,” &c., to hold to the use of the said H. Scott, &c., on the like trusts “as the same are now or shall be vested in me,” &c. It appeared that the testator afterwards contracted to purchase a freehold estate and accepted the title, but died without completing the contract. The plaintiff, who was heir at law, filed this bill for a declaration that the testator died intestate as to this freehold contracted for, and that the plaintiff was entitled to have the contract completed by the executors out of the residuary personal estate. The Vice-Chancellor of England having overruled a demurrer by the executors and defendants interested in the residuary estate, this appeal was presented.

Bacon and Molins for the appellants; Bell, J. Campbell, and R. Moore, for the respondent.

The Lord Chancellor said: That looking at the distinction made by the testator in the application of the word “now” in the two clauses, it was clear that the words “I am now seised or possessed of” applied to the time of the execution of the will, and therefore within the 1 Vict. c. 26, s. 24. The appeal must therefore be dismissed with costs.

Williams v. Powell, Nov. 29, 30, 1849.

NON-ACCOUNTING EXECUTOR.—COMPOUND INTEREST.—WILFUL DEFAULT.

Held, varying an order of reference of the Vice-Chancellor of England, that, without proof of wilful default, the Court will not fix an executor with compound interest on a legacy retained in his hands.

THIS bill was filed to render the defendant, as executor of David Williams, who died in June, 1836, liable to pay the plaintiff, Anne Williams, a legacy of 10,000l. and one-half of the residue, with annual rests and interest from the expiration of one year from the testator's death. It appeared the executor had received sufficient assets to pay the legacy and nearly 7,000l., the moiety of the residue, within two years of the testator's decease, and had kept all the assets in his own hands. The executor admitted laches, and paid 21,000l. into Court. The Vice-Chancellor of England having made an order as prayed, with a reference to the Master to ascertain the amount of the residue, the executor appealed.

Rolt and Sheehaare, for the appellant, contended that as no wilful default had been proved, the executor should not be charged with interest on interest for the whole amount, citing *Heighington v. Grant*, 5 Myl. & Cr. 258. *Stuart and Hallett* for the respondent.

The Lord Chancellor said, that the decrees of the Court below must be varied as to the compound interest, it not being the practice, without proof of wilful default, to order interest upon interest on a legacy, and referred it to the Master to take an account of the legacy of 10,000l. with interest, and also of the one-half of the residue, without regard to the question of rests and compound interest, and costs reserved.

Cooke v. Chalmersley and others, Nov. 28, 29, 1849.

LUNATIC.—ISSUE DEVISAVIT VEL NON.—WILL.—CLAUSE OF FORFEITURE.

Held, affirming an order of the Vice-Chancellor of England, that an issue devisavit vel non will be directed where the testator was a lunatic so found under a commission; and the trustee of the marriage settlement of the heiress-at-law, who was, in the event of disputing the validity of the will, to have her legacy considerably reduced, was directed to be defendant, and the trustees of the will plaintiffs in such issue.

THIS was a bill filed by the trustees of the

will of Sir Gregory Page Turner, Bart., against the testator's wife, Mrs. Cholmondeley, Mr. and Mrs. Fryer, and Mr. Henry Fryer, to establish its validity and carry the trusts into execution. It appeared that the will had been made in June, 1841, and while the testator was a lunatic, found by inquisition under a commission issued in 1823, whereby he gave an annuity of 2,000*l.* to his daughter and heiress-at-law, afterwards Mrs. Fryer, to be reduced to 300*l.*, if she should not formally disavow any proceedings taken to dispute the validity of the will. The Vice-Chancellor of England, upon exceptions to the answer of Mrs. Fryer for insufficiency, refused to order her to answer more fully; and, the Barons of the Exchequer having, upon a case directed, certified that the clause of forfeiture was valid, his Honour ordered the issue *devisavit vel non* to be tried, the trustees of the will to be plaintiffs, and Mr. H. Fryer, the trustee of certain articles made on the marriage of the heiress-at-law to be defendant. From this order an appeal was presented.

Stuart, J. Parke and Lewin, for the present baronet and his eldest son, who were entitled in the event of the forfeiture; *Freeling*, for the trustees of the will, in support of the appeal.

Bethell, Lee, and Samuels, for the trustees of marriage articles; *Willeock and Teed*, for Mrs. Fryer and her mother, contra.

The Lord Chancellor said, that *prima facie* a party actually subject to a commission of lunacy for a number of years, was incompetent to make a will, although he might have lucid intervals, and then make a valid will. The heiress-at-law was certainly the proper person to dispute the validity of the will, but after the opinion of the Court of Exchequer as to the clause of forfeiture, and the transfer of her interest to her husband by the marriage articles, whereby the trustees of the settlement had an interest, the heiress was not at liberty herself to ask an issue. The trustees of the will could not dispute the title of the defendant without first establishing their own under the will, and the only way was by the issue directed by the Vice-Chancellor. The appeal must therefore be dismissed with costs.

Jan. 11.—*Beale v. Simonds*—Appeal from the Vice-Chancellor of England dismissed with costs.

—11.—*Humbley v. Smith*—Order of the Vice-Chancellor Knight Bruce reversed with costs.

—11.—*Whitworth v. Whyddon*—Appeal from the Vice-Chancellor of England dismissed.

—11.—*Haine v. Goddard*—Motion to discharge order of Vice-Chancellor Knight Bruce dismissed with costs.

—11, 12, 14.—*Espartero Earl of Mansfield, in re Universal Salvage Co.*—Appeal from the Vice-Chancellor Knight Bruce dismissed.

—12, 14.—*Craddock v. Piper*—*Cur. ad. vult.*

—14.—*Attorney-General v. Corporation of London*—Appeal from the Master of the Rolls dismissed with costs.

—14.—*In re Cobbett*—Application dismissed to discharge prisoner brought up on a *habeas corpus*, on the ground of defect in the form of order.

—15.—*In re Graydon*—Order to vary settlement made on marriage of lunatic's daughter.

Rolls Court.

Lomax v. Lomax. Dec. 13, 1849.

WILL.—CONSTRUCTION.—PERSONALTY.—MORTGAGE.

Upon construction of a will, held, in an administration suit, that a mortgage debt due from the testator was payable out of the personality, and if this proved insufficient, the real estates descending to the heir-at-law were next liable, and after them the timber on certain estates, to be sold as directed in the will.

EDMUND LOMAX, of Netley, Surrey, by his will, after directing his executors to pay his funeral expenses and debts, except a mortgage, afterwards provided for, out of the moneys at his banker's, and the proceeds of the sale of his agricultural stock and produce, devised certain real estates, and also certain annuities charged on his estate at Netley, which he had by his will bequeathed to his daughter, Mrs. Fraser. The testator then directed, that if there should remain at his death any balance due from him on account of a mortgage on his Tanhurst estate for 6,000*l.*, which he intended to pay off, such balance should be raised by the trustees by the sale of timber on his Sloes and Bullcross farms, and certain parts of his estate at Tanhurst. This suit was instituted to administer the estate.

Turner, Rompell, Gifford, Prendergast and F. Bailey, for the respective parties.

The Master of the Rolls said, that the personal estate was liable to pay off the 6,000*l.* mortgage on the Tanhurst estate, but not the annuities, which would still remain charged on the Netley estate. If the personality were insufficient, the real estate descending to the heir-at-law would in the first place be liable, and if the latter likewise proved inadequate, the deficiency would be made good by the sale of the timber, as directed by the will.

Jan. 11.—*Grace v. Carden and others*—Order directing transfer into Court of plaintiff's shares, and of those under disabilities or not opposing, with leave to all parties to apply.

—11.—*De Reek v. Wagner*—Common order to produce documents, &c. relating to matters in the cause, in the defendant's possession at the office of the Records and Writs clerk.

—12.—*Salomons v. Leing and others*—Demurrer for want of equity overruled, but allowed for multiplicity, with leave to amend.

—12.—*Bailey v. Birkenhead, Lancashire, and Cheshire Railway Co.*—Demurrance allowed for want of equity, and of parties.

—12.—*Greedy v. Lavender*—*Cur. ad. vult.*

Jan. 14.—*In re Norwich Yarn Co., ex parte Harvey and another*—Order for dissolution and winding-up.

— 14, 15.—*Wilson v. Eden*—Petition dismissed with costs, to review Master's report.

— 15.—*Fallace v. M'Dougall*—Part heard.

Vice-Chancellor of England.

In re Robert Lang's mortgaged estates, ex parte Prin. Dec. 7, 1849.

WILL.—CONSTRUCTION.—MORTGAGED ESTATE.—INTESTACY.—RECONVEYANCE.

Upon construction of a will, held, that there was an intestacy as to the legal estates of certain mortgaged estates and the usual reference was directed for a conveyance to the mortgagee by the infant daughters of the son, upon payment of the mortgage-money.

THIS petition was presented under the 11 G. 4, and 1 W. 4, c. 60, by the surviving executor of John Smith, who by his will gave his stock in trade, book debts, securities for money, &c., after payment of his debts, &c., to his wife Jane, her executors, administrators, and assigns. The testator also devised certain houses to the several trusts and equities of redemption affecting the same and the moneys secured on such mortgaged estates, and likewise all moneys left in the bank or invested on any security of any kind whatever. Part of the testator's property consisted of an estate mortgaged to him by Robert Lang, who refused to pay off the mortgage without the testator's infant children were directed to convey, on the ground that the testator had died intestate as to such mortgaged estate.

Shaper, in support of the petition, cited *Galliers v. Moss*, 9 B. & C. 267; *Ex parte Barber*, 5 Sim. 451; *Mather v. Thomas*, 6 Sim. 115.

The Vice-Chancellor directed the usual reference to the Master, holding that there was an intestacy as to the estate mortgaged.

Jan. 11.—*Thorne v. Butcher*—Injunction to restrain the using a certain trade mark on cutlery goods.

— 11, 12.—*Ponford v. East and West India Birmingham Junction Railway Co.*—Injunction restraining the building of an abutment to a viaduct beyond the line of certain houses.

— 14.—*Ex parte Reading, Guildford, and Reigate Railway Co.*—Order for payment of interest on purchase-money from 1st March, 1849.

— 15.—*In re Wrey's Trust*—Cur. ad. vult.

Vice-Chancellor Knight Bruce.

Jan. 11.—*Ford v. Butler*—Motion for injunction to stand over, with leave to plaintiff to bring an action as to the validity of patent—an account of sales to be in the meantime kept.

— 11.—*In re Wheel Concor'd Mining Co.*—

Leave to date order for winding up as of this day, where it had not been advertised within the time required by parliament—the order not being passed or entered.

— 11.—*In re Madrid and Valencia Railway Co.*—Stand over to await result of appeal.

— 14.—*Single v. Terrell*—Decree for specific performance of contract to purchase, with usual decree.

— 15.—*Barron v. Barron*—Reference as to what was due to plaintiff, and accounts of trustee's estate to be taken.

— 15.—*Chapman v. Salter*—Exceptions allowed to Master's report.

Vice-Chancellor Wigram.

Duke of Beaufort v. Morris. Dec. 13, 17, 1849.

ISSUE.—RE-HEARING.—JURISDICTION.

Where the Lord Chancellor had varied an order of this Court, by ordering the omission of certain admissions on defendant's part on the trial of an issue, held, that an application for a rehearing of such issue must be made to the Lord Chancellor.

THIS bill was filed to restrain the defendant from working his colliery in such a manner as to allow water to pass therefrom to the plaintiff's colliery, which was worked on a lower level. At the hearing, the bill had been retained, with leave to the plaintiff to bring an action to try the legal right, the defendant to admit that he had made a communication between the two collieries, and that water passed thereby into the plaintiff's colliery, which admission had, however, on appeal, been directed to be omitted by the Lord Chancellor. A verdict had passed for the defendant, on the question that no water had ever reached the plaintiff's colliery by means of the new driftway, but no decision was come to on the defendant's legal right to make such driftway, which might cause water to flow from his to the plaintiff's mine, which was upon a lower level.

W. M. James and Dumergue now appeared in support of a petition for a new trial of the issue.

Walpole and Rasch, for the defendant, cited *Smith v. Kenrick*, 18 Law J., N. S., C. P. 172.

The Vice-Chancellor said, that the petition must be discharged with costs, with leave to apply to the Lord Chancellor for a re-hearing.

Jan. 11.—*Speakman v. Speakman*—Judgment on construction of will.

— 11.—*Cummins v. Rumney Railway Co.*—Undertaking that no removal of soil from plaintiff's land continued until next motion day.

— 11.—*Cuning v. Bishop*—Leave granted to examine a witness, notwithstanding he had been examined in chief, as to matters not already deposed to by him.

— 11, 12.—*Ord v. Fawcett*—Order for production of books, with leave to file affidavit to set up such parts having no relation to the dealings.

— 12.—*In re Leppington Parish Scheme*

approved by the Master for the administration of charity fund confirmed, with costs reserved.

— 19, 14.—*M'Calmont v. Rankin*—Part heard.

Court of Queen's Bench.

Palmer and another v. Welch. Dec. 7, 1849.

SPECIAL DEMURRER.—SALE OF PATENT OFFICE.—COMPENSATION ON ABOLITION.

On special demurrer, a declaration by the executors of P. to recover the moiety of compensation on the abolition of the office of secondary and "register" of the C. P., by the 5 & 6 Wm. 4, c. 82, under an agreement to that intent by P. with the defendant, was held good; although it did not aver that P. was ready and willing, that he had paid sufficient consideration, and the 5 & 6 Wm. 4, c. 82, only showed the abolition of the office of secondary and "register."

THIS was an action by the executors of Geo. Palmer, to recover the sum of 100*l.*, the moiety of compensation paid to the defendant on the abolition of the office of secondary and registrar in the Chirographer's Office of the Court of Common Pleas. The declaration set out an agreement entered into by Palmer with William Welch and Edward Welch, whereby he was to pay 100*l.* to assist Edward Welch in obtaining the office of secondary and registrar, then held by William Welch, and on the decease of Edward Welch, Palmer was, if able and willing, on payment of 200*l.* more to the patentees to succeed to the office, and that if the office should be abolished in Welch's lifetime, Palmer, or his personal representatives, was to receive a moiety of the compensation. The office of "secondary and register" had been abolished by the 5 & 6 Wm. 4, c. 82, and the sum of 200*l.* had been awarded as compensation.

Mellish, in support of a special demurrer to the declaration, on the ground that the declaration did not aver that Palmer paid any money, that he was ready and willing, that there was sufficient consideration, that the 5 & 6 Wm. c. 82, only showed the abolition of the office of secondary and register and not of that of secondary and registrar, as alleged in the declaration.

Cowling, contra.

The Court said, that looking at the words of the agreement recited in the declaration, there was a consideration, inasmuch as Palmer agreed to pay a sum to the patentee on taking up the office, and his willingness and competency was immaterial, as the office was abolished in Welch's lifetime, and the action was brought for a moiety of the compensation and not of the fees. The Court would take judicial notice that the word "register" in the 5 & 6 Wm. c. 82, meant "registrar," and the demurrer must be overruled, and judgment be for the plaintiff.

Jan. 11.—*Esparte Count de Themas*—Rule nisi for criminal information for libel against printers and publishers of *Morning Post*.

Jan. 11, 12.—*Regina v. Hardy*—Cur. ad. vult.

— 12.—*Hardy v. Felton*—Rule to enter, nonsuit refused.

— 12.—*Gadby v. Esthall*—Rule absolute for new trial, on the ground of surprise in the plaintiff's witnesses failing to prove the defendant's hand-writing in a letter.

— 14.—*Regina v. Brien and others*—Motion refused for writ of *procedendo* to send down for trial at the Central Criminal Court an indictment not found at the Central Criminal Court, but removed to this Court by certiorari.

— 14.—*Hoare v. Coupland*—Cur. ad. vult.

— 14.—*Esparte Dimes*—Writ of *habeas corpus* granted to keeper of Queen's Prison to bring up prisoner in custody for contempt.

— 14.—*Esparte Hughes*—Rule nisi on county treasurer to pay compensation to coroner, consequent on alterations under the County Coroners' Act.

— 14.—*Patent Galvanised Iron Company v. Ogier*—Rule nisi to set aside verdict and enter nonsuit, or for a new trial.

— 14.—*Timothy v. Rose*—Rule refused for new trial.

— 14.—*Regina v. Morris and others*—Rule nisi for certiorari to bring up depositions before coroner, and for admission to bail of parties against whom a verdict of manslaughter had been returned.

— 15.—*Regina v. Dean and Chapter of Rochester*—Rule absolute for mandamus to restore schoolmaster.

— 15.—*Regina, in re Appleyard, v. London and North-Western Railway Company*—Rule absolute for mandamus to purchase lands and proceed with railway.

— 15.—*Welton v. Garin*—Cur. ad. vult.

— 15.—*Oldacre v. Payne*—Cur. ad. vult.

— 15.—*Lloyd v. Howard*—Rule nisi for new trial of two issues, found for the defendant on the ground of verdict being against evidence.

— 15.—*Temponny v. Miller*—Rule nisi to set aside verdict, and for a new trial.

Queen's Bench Practice Court.

(Before Mr. Justice Erle.)

Esparte Whitefield. January 12, 1850.

ARTICLED CLERK.

The Court will discharge a clerk from his articles, and also from an assignment, when the assignee discontinues practice, and goes abroad without executing an assignment; and direct substituted service of the rule; giving the clerk liberty to enter into fresh articles for the remainder of his service with another attorney.

THIS was an application for a rule that Mr. John C. Whitefield, an articulated clerk, might be discharged from his articles of clerkship, into which he had entered in the year 1846 with a London attorney; which had been subsequently assigned to another attorney, who had now discontinued practice and gone abroad.

without executing an assignment of the articles:—

The terms in which the rule was asked and granted were:—"That A. B. (the absent attorney) in whom the articles were vested should (within four days) show cause why the said J. C. W. should not be discharged from certain articles of clerkship, bearing date — and made between — of the one part, and the said J. C. W. of the other part; and also a certain assignment thereof, bearing date —, and which said articles of clerkship were then vested in the said A. B. by virtue of such assignment; and why the said J. C. W. should not be at liberty to enter into fresh articles for the residue of his service of clerk to —, one of the attorneys of this Court; and why such further articles should not be enrolled without an assignment of the original articles. And that service of the rule by leaving a copy thereof at — (last place of residence in England of the said A. B.), and by sticking up another copy thereof in the Queen's Bench Office, might be deemed good service."

Bell moved upon an affidavit, which stated the execution and enrollment of the original articles, and assignment to the absent attorney, in whom the articles were now vested by virtue of such assignment; the absence of the attorney out of England; but at what particular place could not be stated; his having discontinued practice; and his last place of residence in England. That the clerk had duly performed all the covenants and agreements on his part contained in the articles and assignment; that he was not under any liability to the attorney; and had entered into an arrangement with another attorney of long-established practice and great respectability, for service of the remainder of his clerkship; and who had agreed to accept the further articles, the clerk being then in his employment with that object. The application was made under the Attorneys' and Solicitors' Act, 6 & 7 Vic. c. 73, s. 13; and the cases cited in support, were *ex parte Hancock*, 2 Dowl. N. C. 54; *ex parte Cartmel*, 6 Jur. 950; *ex parte Wilkinson*, 9 Dowl. P. C. 320.

The Court granted the rule in the terms asked. Rule granted.

[None of the reported cases on this subject appear to have discharged an assignment, but it would seem the correct course is to do so, as after an assignment, the interest in the clerk's service and duty, as well as the residue of the term, becomes vested in the assignee, and would remain so until discharged by operation of time or order of Court; and the subsequent service is under the assignment. The above rule was framed, we are informed, after mature consideration by the Master who drew it up, and will be a precedent to guide subsequent cases.—ED.]

Jan. 11.—*In re Ingledew*—Motion granted to enter the name of William Daggett on the roll of attorneys instead of that of William Daggett Ingledew.

Jan. 14, 15.—*Regina (ex parte Feather) v. Poor Law Commissioners*—Rule refused.

—15.—*Regina v. Magistrates of Bath*—Rule nisi on justices to issue distress warrant to enforce penalty under the Lord's Day Act.

—15.—*In re Wilkinson, ex parte Day*—Rule nisi on attorney to furnish account of actions brought in Messrs. Day's name.

Common Pleas.

Camp v. Pope. Nov. 20, 26, 1849.

ATTORNEY'S LIEN FOR COSTS AFTER PLAINTIFF'S DEATH.—DISCHARGE OF DEFENDANT.

Held, that an attorney's lien for costs in an action in which judgment was given for the plaintiff does not extend so far as to warrant the detention of the defendant in custody when the plaintiff was dead and no letters of administration were taken out to the plaintiff's effects.

A RULE nisi had been granted on November 20, to discharge the defendant out of custody under a *ca. sa.* on a judgment recovered in June, 1841, for 71l. 4s. 9d. debt, and 21l. 8s. 3d. costs. It appeared that the plaintiff had left England in August, 1841, being in insolvent circumstances, and gone to Russia, and there was every reason to believe she had died on her journey from St. Petersburg to Moscow. Search had been made at Doctors' Commons, but no letters of administration had been taken out. The rule nisi having been, by order of the Court, served on Mr. William Francis Low, the plaintiff's attorney.

Lush, on his behalf, showed cause, and contended that the attorney's costs should first be satisfied.

Scott in support of the rule.

The Court said, that although notice had been served on the plaintiff's attorney of the grounds for believing the attorney was dead, he had not stated anything to impeach that inference. If she were dead his authority was determined, and he had no authority to arrest a defendant for his costs. The attorney's lien did not, therefore, extend so far as to keep a defendant in custody for costs after the plaintiff's death, and the rule must be made absolute for the defendant's discharge.

Jan. 11.—*Leader and others v. Strange*—Rule nisi to set aside verdict, and enter it for defendant, or for a nonsuit.

—11.—*Hore v. Silverlock*—Rule nisi for attachment against a witness for not attending at the trial in compliance with his subpoena.

—11.—*Same v. Same*—Rule refused for new trial on the ground of improper reception of evidence, of misdirection, and of the absence at the trial of a witness who had been subpoenaed.

—12.—*McKenzie v. Shannon and Sligo Railway Company*—Rule nisi on defendants to pay instalments of debt found due under an arbitrator's award.

—12.—*Rawl v. Bennett*—Rule nisi for new

trial, on the ground that the verdict was against evidence.

— 12; 14.—*Moss v. Smith*—Part heard.

— 14.—*Hilcoat v. Archbishops of Canterbury and York*—Rule nisi to enter verdict for defendants on 2nd and 7th counts, or for new trial.

— 15.—*Blacketer v. Gillet*—Rule refused to arrest judgment on the ground of defect in declaration.

— 15.—*Hilcoat v. Archbishops of Canterbury and York*—Rule nisi to enter verdict for plaintiff, or judgment non obstante verdicto on the sixth issue for the plaintiff.

— 15.—*Lawson and another v. Dumbler*—Rule refused to set aside verdict and enter it for the defendant, or for a nonsuit.

— 15.—*Lysaght v. Bryant*—Rule refused to set aside verdict and for new trial, or enter non-suit.

Court of Exchequer.

Duke of Beaufort v. Smith. Nov. 21, 1849.

TOLL ON COALS.—IMMEMORIAL CUSTOM.—
SURVEY BY CROMWELL.

Upon special case, the plaintiff was held entitled to recover a toll of 4d. on every way of coals raised within a certain manor; where the right appeared to exist from a lease in 1664, reserving the same, which was undisputed for upwards of 100 years.

Scumble, a survey by order of Oliver Cromwell, as generalissimo of the forces, to whom the manor was granted by parliament, is not a public document, but merely made in his private character.

THIS was a special case whether the plaintiff was entitled, as lord of the manor of Kilby, to the sum of 4d. for every way of coals brought into the manor and shipped over the bar of Swansea. It appeared that in 1650, a survey of the manor was made by Oliver Cromwell, then generalissimo of the forces, to whom the parliament had granted the manor. Afterwards, in 1664, a lease of the manor was executed by the possessor thereof reserving the payment of this toll, and the toll had accordingly been paid for upwards of 100 years, and until about 20 years ago, when the present disputes arose. The plaintiff was admitted to be owner of the soil.

Montague Smith for the plaintiff; *Aspland* for the defendants.

The Court said that, irrespective of the survey of Oliver Cromwell, which was not receivable as a public document, but merely as made in his private capacity, there was abundant evidence from the lease of 1664 of the existence of the claim, and that the plaintiff was entitled to recover. The judgment would therefore be for the plaintiff.

Jan. 11.—*Farley v. Coombes and another*—Rule absolute to refer arbitrator's costs to the Master for taxation.

— 11.—*Cobbett, pauper, v. Sir G. Grey and another*—Cur. ad. vult.

Jan. 11.—*Isaac Hammer Smith and charge*—Cur. ad. vult.

— 11.—*Regina v. Skilbeck*—Execution to be stayed till the 16th inst., and notice of application as to costs to be served on the Attorney-General and the Solicitor of Inland Revenue.

— 12.—*Macgregor v. Kirby*—Rule absolute to stay proceedings until the plaintiff had proved his debt in Chancery under the 11 & 12 Viet. c. 45, s. 73.

— 12.—*Wahley v. Hesley*—Rule nisi to rescind judge's order allowing plaintiff to amend his declaration, or to vary it by ordering him to pay the costs of the trial.

— 13.—*Edwards v. Rogers*—Rule nisi for prohibition to County Court judge from proceeding in a second claim for the same ground of action as a former claim which had been removed by certiorari into this Court.

— 14.—*Bosquet v. Harridge*—Rule nisi to enter verdict for defendant.

— 14.—*Vallee v. Dumeryne*—Rule refused for new trial.

— 14.—*Dee d. Nixon and another v. Preston*—Rule nisi to enter nonsuit.

— 14.—*Larkin v. Marshall*—Rule refused to discharge married woman out of custody under an execution in proceedings in ejectment.

— 14, 15.—*Sampson and others v. Young and others*—Rule nisi for new trial.

— 15.—*Attorney-General v. Skilbeck*—Rule refused to re-open taxation.

— 15.—*Baley v. Watson and others*—Rule refused for new trial on the ground of misdirection, and that the verdict was against evidence.

Court of Bankruptcy.

(Coram Mr. Commissioner Fonblanque.)

Exparte Dorant, in re Dorant. Nov. 14, 1849.

RECKLESS TRADING.—FICTITIOUS BOOKS.—
THIRD-CLASS CERTIFICATE.

Where a trader kept his books imperfectly, and traded recklessly, but no fraud was proved, a third-class certificate was granted at the expiration of 12 months, with protection.

THIS was an application on behalf of Samuel Dorant, a linendraper at Deptford, for his certificate. It appeared that the bankrupt, in the two months before his failure, had purchased goods to the amount of 600l., and that he had only commenced to keep a cash-book shortly before his bankruptcy, which he had imperfectly kept.

Turner opposed on behalf of the assignees. The Commissioner said, that the bankrupt had traded recklessly, and the cash-book was filled with back entries taken chiefly from receipts. As, however, it did not appear there were any fraudulent entries, the certificate would only be suspended for 12 months, and one of the third-class granted, with protection in the meantime.

Insolvent Debtors' Courts.

In re Fell. Dec. 22, 1849.

INSOLVENT.—PROTECTION ACT.—ADJOURNMENT SINE DIE.

Where an insolvent purchased goods and afterwards sold them without paying for such goods, held, that further protection would not be granted, and an application under the Protection Act was adjourned sine die.

THIS was an application under the Protection Act, on behalf of Mrs. Patience Fell, a

lodging-house-keeper. It appeared that she had obtained furniture to the amount of 78l. odd from two creditors, only paying 11l. for the same; and afterwards sold the whole of her goods for 70s., and after paying servants' wages and a sum which she had borrowed, spent the remainder without paying her creditors.

Served in support: Cooke for the creditors, contra.

The Chief Commissioner held, that the conduct of the insolvent disentitled her to a continued protection; and adjourned the application sine die.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see

Jurisdiction of County Courts, p. 87.

Poor Law and Magistrates' Cases, 108.

Construction of Statutes, 128, 146.

Principles and Jurisdiction, 165.

Appeals from Revising Barristers, p. 186.]

LAW of ATTORNEYS and SOLICITORS:

PRIVILEGED COMMUNICATIONS.

1. *Discovery*.—Privilege as to cases and opinions anterior to any litigation.

A defendant, by his answer, stated, that he was advised that the cases and opinion stated in the schedule, were privileged: *Held*, that the privilege was not sufficiently shown by the answer; but liberty was given to supply the omission by affidavit. *Pearduddock v. Hammond*, 11 Beav. 59.

2. A solicitor who was examined as a witness in a suit to rectify a mistake in a marriage settlement, declined to produce certain letters, on the ground that he had received them in his character of confidential solicitor to the intended wife; and he declined to produce certain books, because they contained particulars of confidential matters between him and his clients.

Held, that the grounds alleged for the non-production were insufficient. *Walsh v. Trevelyan*, 15 Sim. 577.

PRODUCTION OF CORRESPONDENCE.

Without prejudice.—Production refused of letters which passed between the respective solicitors, with a view to a compromise, upon an express stipulation that they should not, in judicay, be referred to or used to the advantage of the defendant, if an amicable arrangement was not come to. *Whiffin v. Hartwell*, 11 Beav. 111.

TAXATION.

1. *Order of course*.—*Irregularity*.—An agreement was signed between a solicitor and his clients, by which the former was to take a sum agreed on, in full of all demands. An order of course afterwards obtained for the

taxation of his bill was discharged for irregularity. *In re Mackrill*, 11 Beav. 42.

2. *Irregularity*.—*Waiver*.—An irregular order for taxation may be waived, but it must be done in some clear and unequivocal manner. *In re Mackrill*, 11 Beav. 42.

3. *Order of course* for taxation discharged, on the ground of the suppression of an alleged previous reference to arbitration, though the fact was disputed. *De Fouchères v. Dones*, 11 Beav. 46.

4. *Irregularity*.—On the 21st of July the Master proceeded, *ex parte*, in a taxation in the absence of the client, who had not been served with a warrant to proceed on that day. A warrant was afterwards regularly served for the 31st of July, subscribed "to complete the taxation." The client did not attend; but, the Master being informed of the former irregularity, re-taxed so much of the bills as had been taxed on the 21st: *Held*, that the client not attending the warrant of the 31st, could not set up the irregularity of the 21st. *In re Mowrihan*, 11 Beav. 48.

5. *After action brought*.—*Costs*.—Where a taxation is ordered after action brought, the general rule is, that if anything is found due, the client must pay the costs of the action. *In re Hair*, 11 Beav. 96.

6. *Order of course*.—*Special petition to tax*.—*Objection too late*.—A client, on a special petition, obtained an order for taxation. The taxation having been completed, the client presented a petition for consequential directions. The solicitor then objected, that the common order would have been sufficient, and he asked the costs beyond those of a common order: *Held*, that the objection came too late. *In re Hair*, 11 Beav. 96.

7. Under the common order for taxing a solicitor's bill, the Master ought to take an account of sums received by the solicitor for his client, in the character of solicitor, and which are connected with the items of the bill. But the Master ought not to take, under the order, a general account between the parties; and, consequently, the decision to the contrary, in *Russell v. Buchanan*, 9 Sim. 175, was erroneous. *Cooper v. Beest*, 15 Sim. 564.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

Queen's Bench.—Middlesex.

REMANETS FROM MICHAELMAS TERM, 1849.

R. Sydney	Cahill	S. J. Macdonald (stayed)	Dt. Bolton
Johnson, Son, and W.	Rowe	Cope (stayed)	Prom. Chester
S. B. Hamer	Davies	S. J. Wilkinson (stayed)	Prom. Howard
M. Fraser	Williams	S. J. Whiteway (inj.)	Prom. Marshall and P.
Adlington and Co.	Bastone and another	Ross (inj.)	Dt. Chadwick
Elderton and H.	Fiddes	S. J. Wm. Toogood (inj.)	Prom. Campbell and A.
Johnson, Son, and W.	Crowther, admix., &c. (inj.)	Edwards and another, surviving executors	Dt. Williamson
Becke	Becke	Parish and another	Dt. Helme
Jno. Lewis	Moon (stayed)	Connop	Pro. Lewis
Thomas M. Parker	Clerk (inj.)	S. J. Hughes	Pro. Burrell
Ablett	Neal	Ward (inj.)	Pro. Carion and H.
Everest and Co.	Clutterbuck	Carter (inj.)	Pro. Bell
Wontner	The Queen	Johnson and others	Indt. E. Lewis
Wyche	Flocton and others	S. J. Melladew and others	Ca. G. Fry
Nixon	Ghahlin	Gregory and another	Tres. Hodgson and B.
Coodo and Co.	The Queen	S. J. Sievier	Sci. fa. Wight
H. Walker	The Dean and Chapter of Christ Church, Oxford	S. J. Hicks	Dt. C. Blake
Watnen and P.	Smith	Mead	Dt. Charles Barham
Lawrance and P.	Rees	S. J. Brough	Isa. Brough
Same	Same	S. J. Ponsoby	Isa. Ford
Hall and Co.	Doe d. Barnes and anr.	Newman and another	Ejt. Hutchinson
J. Bird	Hopper	S. J. Baker	Dt. Baker and Co.
Watson	Simmons	Simmonds	Dt. Lloyd
Wetherfield	Seage	S. J. Killick	Pro. Philp.
Brandon	Spiller	S. J. Watts and another	Ca. Dawes
Fry and L.	The Queen	S. J. The South Eastern Railway Company	Issue, Tilleard and Co.
Childs	Birch and another	S. J. Lowndes	Pro. Alger
Shearman and S.	The Queen	S. J. Waller	Indt. In person
Poole and G.	Barker and another	S. J. Cleobury	Pro. Walker
Branscomb	Benson	Lowe	Pro. Wilkinson
Garry	Coyle	S. J. Leeks	Ca. Dean and Co.
Waite	King	S. J. Hare, Knt.	Pro. Davies, Son and Co.
Shuttleworth	Daniel	S. J. Callis and another	Ca. Kilgour and P.
Bircham and Co.	Chaplin	S. J. Burge and others	Ca. Fisher for Berge Shirreff for George, Robinson for Cle.
Blackmore	The Countess de Selis & others	S. J. Bagley	Covt. Garrard
Wing and Du Cane	The Dublin and Belfast Junction Rail. Co.	S. J. Chadwick	Dt. J. A. Rose.
Same	Same	S. J. Same	Dt. Same
Burrier and W.	The Queen	S. J. Edwards and others	Sci. fa. Wilson and H
R. K. Lane	Smith	Jefferys	Pro. Gregory and Co.
Same	Webb	S. J. Gwyn	Pro. S. Fry
Taylor and C.	Windsor, Esq.	S. J. Cross	Dt. In person
Same	Dale	M'Creight	Pro. B. Munn
Hodgson and R.	Bower	Smith	Pro. Gresham
Beavor, B. and P.	Mill, Bart.	S. J. The Attorney-General	Isa. from Chancery, Pemberton and Co.
T. Kirk	Daubney	S. J. Phippe, Esq.	Dt. A'Beckett and Co.
Lucena	Johnston, jun.	Samuel	Pro. Warrant
Hoskins	Warner	S. J. Young and others	Tres. Sanford
Pringle and Co.	Jonasohn	Harrison	Dt. Dean and Co.
Kingdon and S.	Grabbam	S. J. Jackson	Ca. Ashurst and Son
Biggood	Douglas	Stratford	Pro. M. Lewis
Pinniger	The Agriculturist Cattle Insurance Co.	S. J. Fitzgerald	Dt. Wilkinson and G.
Same	Same	S. J. Waller	Dt. Gregory and Co.
Mewburn and J.	Richardson	Richardson	Pro. Todd
G. Wilson and Son	Ridley	Firby	Dt. Crosby and Co.
In person	Shearman	S. J. Cremer	Pro. Hoppe and B.
G. White	Halfhide	Baxter	Pro. Munday
W. and E. Dyne	Doe d. Fowler	Morgan	Ejt. Pinero

Pringle and Co.	Brown	Rogers	Dt. Humphrys
J. B. Whitfield	Doe d. Whitfield	Pearce	Ejt. Ashley
S. Abrahams	Dechastonville	Tissamter	Pro. Randall
Richards and W.	Walker and others	S. J. Hindley and others	Pro. Dickson and O.
Long	Fish	Hawker	Dt. Mitton
Kingdon and S.	Goodere	Bailey	Tres. on Ca. W. W. Wilson
J. T. Cookney	Strathan and others	Fell	Pro. Mawe
John Bell	Richardson	Bird	Dt. Walton
Sanger	Bonaker, clk.	Evans	Dt. Bolton and Co.
Fry and L.	Chaffers	Miles	Pro. Lewin
Kingdon and S.	Wheeler	Gracock	Tres. on Ca. Kampster
Shearman	Goddard	Holder	Pro. Taylor
Rhodes and Co.	Fry and another	Coben	Pro. Palmer and Co.
C. Dod	Harris	Holland	Pro. W. H. Smith
Hodgson	Heaketh and another	Groom and another	F. I. Visard and S.
King and A.	Hart	Parry	Dt. Taylor and S.
T. Marston	Edwards	Stewart	Dt. Brookfield
Bell	Cole and others	Matted	In person
Poxon	Shiel	Adkins	Dt. Richardson
Kingdon and S.	Green	Muntingdon	Tres. on Case Randall
Thomas Edam	Jones	Crate	Dt. G. O. Field
Clarke	Townshend	Gilkes	Interp. Willoughby & Co.
Begbie	Foskett	S. J. London & Blackwall Rail- way Company	Ca. Stokes and Co.
Same	Freeman (a pauper)	Withers	Tres. Herbert and Co.
Clark	Knight	Miller and others	Tres. Madox and W.
Monkhouse	Eagg	Bowler	Dt. Frankham
C. Wright	King	Cannon	Tres. Ravenscroft
Hine and Co.	Doe d. Still	Davis	Ejt. In person
In person	Smith	Jones	Pro. Raw
G. and C. Smith	Lintoff	Farrally	Tres. Lewis
Pine and B.	Rees	Williams and others	Dt. John Williams
In person	Barker	Cole	Dt. Wilson
William Smith	Mullett	Challis, Esq., and another	Ca. Hayne

Common Pleas.

Middlesex.

Lonsdale	Bluck, clk.	S. J. Boys	Ca. Gadsden
Bevan and G.	Burke	S. J. Parkgate and Chester & Birkenhead Rail. Co.	From. Williams and M.
Henderson	Werneck	Jacobs	Ca. Oliver
J. Robinson	Dowley	Waterford and Kilkeny Railway Company	Isa. Edwards and Co.
Coe	Downes	S. J. Clayton	Tres. Goren
Parker and Nelson	Elwes	Pothecary	Dt. H. Knight
Colombine	Colombine	S. J. Penhall	Tres. Chidley
Bicknell and B.	Perch	Blazdell	Dtne. Pain and H.
Turner	Harrop	London	Covt. Tweed
R. D. Neale	Hefferman	Bell	Tres. Tyler
De Medina	Diggins, by, &c. (a pau- per)	Eagle	Ca. Rose
Smith and Curties	H. Guy	J. Cox	Dt. In person
W. Wilkins	The Banwen Iron Co.	Barnett	Dt. Maberley
J. Raw	Kinning	S. J. Buchanan, Gn., &c.	Tres. In Person
C. E. Lewis	Hudspeth	Yarnold	Dt. Steadman
Same	Chamberlin	Jackson	Dt. Meyrick
Fesentmeyer	Chambers and another	Watts	From. Granger
Price and Bolton	Humphrey	Timson	From. C. Townshend
G. Blake	Doe d. Rodwell	Robinson	Eject. R. K. Lane
F. R. Smith	Gander	Sheldrick	Tres. S. Prentice
Graham	Donaldson	Egan	Dt. C. H. Smith
Sidney	Peckett	Sommers and others	From. Chappell
W. H. Orchard	Storey	Wyon	From. C. J. Shirreff
Rogers and P.	Shoubridge	S. J. Clark	From. Withall
Becke	Budgett	Brown	From. Westmacott & Co.
Condell	Benett	Peany, sued, &c.	Debt T. J. Church

Court of Exchequer.

Middlesex.

Loveland and B.	Herring	S. J. Klemen	Pro. G. H. Taylor
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James and Son W. Stephens	Owllett Midland Great Western Railway Company	S. J. Mayor, &c., of Rochester Replva, Wightman & Co.	
Same	Same	R. Sheppard	Dt. Johnson and Co.
Same	Same	S. J. I. Sheppard	Dt. Same
Same	Same	S. J. Lewis	Dt. Same
Same	Same	S. J. Clapham	Dt. Same
Same	Same	S. J. Gunney	Dt. Same
Same	Same	S. J. Dowding	Dt. Johnston
Same	Same	S. J. Norris	Dt. Johnston and Co.
Same	Same of Ireland	S. J. C'ment	Dt. Same
Same	Same	S. J. Barnes	Dt. Same
Dodd and Co.	Sims and cns.	S. J. Bretton and another	Pro. Homley
Parker and Co.	Fowler	S. J. Drake, clerk, &c.	Pro. Bawor and Co.
Ivimey	Nicholas	S. J. Heenan	Pro. Weale and B.
F. R. Chappell	D'Aroy	S. J. Lambert	Few and Co.
E. Lewis	Bull, admor., &c.	S. J. Ranken	Tro. Sudlow and Co.
W. Kinsey	Simpson, extrix., &c.	S. J. Earl of Mountcashell	Dt. G. Hensman
S. Smith	Ford	S. J. Elliott and others	Tro. C. Browne
Cattarns	The Queen on the pines- cution of Mandalay	S. J. Lowe and others	To Repeal Lettens Patent Slighnam R.
W. Meyrick	Gilkes and others	S. J. Gandel	Pro. Lawman and P.
C. Bell	Diggle	S. J. The London and Black- wall Railway Co.	Pross. Stokes and Co.
Same	Same	S. J. Same	Ca. Stokes and Co.
C. B. Hill	Botgurnean	S. J. Brett	Pro. Edwards and R.
Clayton	Brougham	S. J. Duffye	Replv. C. Underwood
G. H. Lewin	Ellis	S. J. Lord Ingestre	Pro. Youngblood
Wright, E. and S.	Cockram	S. J. Lewis	Dt. Gregory, E. and Co.
M. Turner	O'Connor	S. J. Bradshaw	Ca. Symons
Maughan and Dixon	Shaw	S. J. Bluck	Dt. Scott and T.
Westmacott and P.	Christie and others, amig- nees, &c.	S. J. Massey	Pro. Stanley
H. Weeks	Bond	S. J. Radcliff	Pro. Westmacott and Co.
A. R. Steele	Donnell and others, as- signees, &c.	S. J. Anderson	Dt. Lofty and Co.
Trail	Lucrson	S. J. Busk	Ca. H. H. Duncombe
J. Richards	Hyland	S. J. Vigne, clerk	Ca. Smith and Son
Boydell	Blackburn	S. J. Shee	Pro. J. Shaw
H. Harris	Hart	S. J. Maxendale	Ca. Tatham and Co.
Leadbitter	Pattinson	S. J. Hall	Pro. Bell and B.
C. Lewis	Giles	S. J. Pritchett	Ca. Humphreys
Futvoye and S.	Futvoye, axor., &c.	Stevens	Dt. Shaen and G.
W. Ley	Forester	Hawkins and another	Ca. Lewis and L.
W. Moss	Lindsay and aur.	S. J. Smith	Ca. A. B. Steele
F. J. Tucker	Hunter	Sir G. Bowyer, Bart.	Cov. Stables and B.
Le-persan	Osborne	S. J. Ridout	Ca. James Taylor
Roason	Goghan	James Nicholson	Pro. J. Lewis
H. and W. Teogood	Liverpool, Crosby, and South Port Railway	Chadwick	Dt. J. A. Rose
E. Lewis	De Mikoraki	Glass and another	Tress. Roberts
T. W. Gray	Ahergate, Nottingham, & Boston & Eastern Junc- tion Railway	Coulthard	Dt. Hodgson
W. H. Davis	Diamond	Walker	Dt. Cree and Son
Same	Annet	Druce	Tress. W. W. Loughby & Co.
Rae and Brown	Catmur	Carlisle	Dt. H. Ashley
Edwards and J.	Lawrence and another	Wadsworth and others	Dt. Ablett
W. H. Davis	Hunt	Gregson and another	Tress. C. A. Woolley
Tatham and P.	Doë d. Brown	Shepherd	Tress. Kent
Tyler and Holmes	Seabright	Eastern Counties Railway	Ca. Duncan
W. Justice	Showler	Oselt and others	Tress. J. T. Moss
W. & G. T. Woodroffe	Hankin	Bennett	Dt. Harris
Same	Bullock and another	Cooper	Dt. W. B. James
F. P. Chappell	Beale	S. J. Farebrother and others	Pro. Palmer and Co.
S. J. Hornidge	Hancock	Bewley	Pro. Bevan and G.
J. A. Jones	Lawrence	Jones	Pro. T. B. Howard
Same	Jones	Fraser	Pro. S. Neal
Fearnley	Knight	S. J. Fox and another	Ca. Brace
Hare	Brenan	Finnis and another	Ca. Hayne
De Medina	Neale	S. J. Le-Peige	Pro. Catten
G. T. Condy	Condy and another	Hawker	Dt. Anderson
Fearnley	Johnson and others	Schlencker	Dt. Davis
Lovell	Roberts, Bart.	Oldaker	Dt. T. O. Hall
Chilton and Co.	Sturge and another	Clark, Bart.	Pro. Burchell and Co.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, JANUARY 26, 1850.  
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EXEMPTION OF BENEFIT BUILDING SOCIETIES FROM STAMP DUTIES.

THE policy of encouraging habits of prudence and forethought amongst those classes mainly dependent upon their own exertions for the means of subsistence—even at some considerable pecuniary sacrifice to the general public—requires only to be stated to meet instant and universal approval. The practical application of the principle, however, by the legislature is not without difficulty. Schemes started with plausible pretensions of benefiting the industrial classes, frequently prove a snare for the unwary, and are maintained and proceeded with solely for the advantage of an individual or a clique. Nothing can be conceived less objectionable, or indeed more laudable, than an association of persons with limited incomes for the purpose of investing mutual savings in the purchase of freehold and leasehold property. The advantages derivable from the profitable employment of money in such a manner that the capital itself is quickly reproduced and again invested, are obvious; and in a country where frugality is happily not uncommon, and the disposition to acquire property is general, it cannot create surprise to find institutions founded on such a principle meeting very extensive encouragement and support. Nor is it, perhaps, extraordinary that the privileges and exemptions granted to societies founded with the object of providing funds from the earnings of working men applicable to their relief in seasons of calamity or destitution, should have been extended to societies with somewhat kindred objects, and which, it might be supposed, required and deserved to be equally fostered and protected. Assuming that the legislature intended to do that which they have done, it is not unreasonable to suppose that they

proceeded upon the considerations above adverted to, when mortgages and other securities given to building societies were exempted from stamp duties. That the joint operation of the act 10 Geo. 4, c. 56, s. 37, and the 6 & 7 Will. 4, c. 32, s. 4, is to exempt securities of this description from stamp duty has now been determined by the deliberate decision of the Court of Common Pleas, in two cases occurring with a considerable interval between.

The earliest case in which the point was formally adjudicated upon, was that of *Walker v. Giles*,^a discussed at the Vacation Sitting after Michaelmas Term, 1848. This was an action of replevin, to which there was an avowry, alleging a tenancy by the plaintiff to the trustees of a benefit building society, called "The Third Temperance Benefit Building Association." In support of the avowry, a mortgage deed was tendered in evidence, by which the lessees of premises situated in the City of London, and held under a lease from Sir Lancelot Shadwell, for 21 years, at a rent of 120*l.* per annum, in consideration of a sum of 396*l.*, devised these premises to the trustees of the said association, upon trust to permit the mortgagors to receive the rent until default, but with power to the trustees to appoint a receiver and sell the premises, if the mortgagors should fail to perform any of their covenants. The mortgagors, who had become shareholders, covenanted to pay subscriptions and interest on their shares, according to the rules of the society, and to pay the rents and perform the covenants contained in the lease. There was also a clause of re-entry, and the mortgagors, by a further clause, attorned to the mortgagees as tenants at the will of the mortgagees, at the yearly rent of 200*l.* This

^a Reported 6 Com. Bench Rep. p. 662.

deed was stamped with an *ad valorem* stamp of 5*l.* only, and its reception in evidence was objected to, on the ground, that as in addition to the mortgage, it contained a re-demise of the premises to the mortgagors at an advanced rent, it ought, therefore, to have had a lease stamp of 3*l.* The answer to this objection was, that no stamp was necessary, for that the combined operation of the act "to consolidate and amend the Laws relating to Friendly Societies,"^b and the act "for the Regulation of Benefit Building Societies,"^c was to exempt all securities given to or on account of these associations from stamp duty. Upon the argument, it was all but admitted that the general exemption from stamp duty contained in the Friendly Societies' Act, was imported into the Building Societies' Act; but it was contended, that the incorporation of the 37th section of the Friendly Societies' Act into the Building Societies' Act, must be taken with a qualification introduced by the 1st section of the 3 & 4 Vict. c. 73,^d which enacts, that nothing in the 10 Geo. 4, c. 56, "shall be construed to extend to grant any exemption from stamp duty to any friendly society inrolled, or to be inrolled, under the provisions of the said act, or of any other act relating to friendly societies, when the sum to be assured to any individual, or to any person nominated by, or to claim under, him or her, shall exceed the sum of 200*l.*;" and it was also insisted, that the deed operated as a lease, and that there was no provision in the Friendly Societies' Act authorising the trustees to lease property, or suggesting that leases were amongst the instruments intended to be exempted. The Court, however, decided, that as by the 37th section of the Friendly Societies' Act, bonds and other securities, or assurances, given to or on account of any friendly society, are expressly exempted from stamp duty; and by the 4th section of the Building Societies' Act, all the provisions of the Friendly Societies' Act, "so far as the same or any part thereof may be applicable to the purposes of any benefit building society," are extended and applied to such benefit building societies as if expressly re-enacted, the latter section exempted from stamp duty all securities given for the purpose of carrying the Building Societies' Act into effect. The Court further held, that the 3 & 4 Vict. c. 73, s. 1, limiting the exemption from

stamp duty in the case of friendly societies to transactions where the sum to be assured to any individual did not exceed 200*l.*, had no effect as regarded building societies. Upon this other point adverted to in the argument—the operation of the deed as a lease—the Court held, that the deed was a mortgage security only, and not a lease.

Although building societies had claimed the exemptions to which they were authoritatively held in *Walker v. Giles* to be entitled, it must be admitted, that the announcement of the opinion of the Court in that case excited some surprise in the profession and still more amongst the public. Those who did not presume to doubt that the law was as it had been propounded by the Court of Common Pleas, wondered that it should be the law, and there were some persons bold enough to impugn the decision as inconsistent with the true construction of the act of parliament. It was remarked, too, that the judgment of the Court as regarded the necessity of a stamp, though unanimous, was extemporaneous. The point decided in *Walker v. Giles* came again before the Court of Common Pleas, in *Michaëlas Term*, 1849, in a case of *Barnard and another v. Pilsworth*,^e where the plaintiffs, who were the trustees of an inrolled building society called "the Amicable Building Society," produced a mortgage deed not stamped; which was objected to on that ground and admitted by Chief Justice Wilde, notwithstanding the objection. Upon a motion for a rule for new trial, *Walker v. Giles* was referred to, and Maule, J., pointedly observed that, "notwithstanding some remarks he had noticed in some legal periodical, he still adhered to the opinion formed in the case of *Walker v. Giles*, and thought the decision of the Court with respect to the stamp was correct."

Assuming, as we are bound at present to do, that the law was correctly laid down in the cases cited, the question that remains is, whether it is a law which ought to remain unaltered? According to these decisions, building societies stand upon a better footing than friendly societies, as regards the exemption from stamp duty, inasmuch as the exemption is restricted as regards the latter to transactions where the sum to be assured to any individual does not exceed 200*l.*, whilst in respect of building societies there is no limitation as to amount. The law, however, is objectionable upon other and wider grounds. The principle upon

^b 10 Geo. 4, c. 56, s. 37.

^c 6 & 7 Wm. 4, c. 82, s. 4.

^d Entitled "An Act to explain and amend the Acts relating to Friendly Societies."

^e Reported 6 Com. Bench, 698, a.

which a parish ought to be rated and assessed is applicable to the taxation of a kingdom. What is unequal is manifestly unjust. A certain sum is to be raised by taxation, and if one class of persons is relieved from its share of the burthen, the pressure on other classes is proportionably increased. Now, it is notorious that the managers and members of building societies are not always industrious persons in humble circumstances. There are, doubtless, many needy persons connected with those societies, but they are not persons looking to better their condition by small savings from daily labour, but speculators and adventurers seeking immediate relief from loans, or inordinate gain by usurious interest. Practically, they are frequently very little else but loan societies. To what extent they have fulfilled the ostensible purpose for which they were founded might be accurately enough ascertained, if any member of parliament, in the ensuing session, would move for a return of the number of persons who have become members of benefit building associations, and of the number of individuals becoming owners of freehold or leasehold property through the instrumentality of such societies. If, as we have some reason to conclude, the proportion of members becoming proprietors of freehold or leasehold property, since the passing of the stat. 6 & 7 Will. 4, c. 32, has been comparatively insignificant, it is tolerably clear that those societies have not effected what was held out when they were established, and that the benevolent intentions of the legislature in exempting them from taxation, have been in a great degree frustrated. Whilst it is found necessary to tax prudence by imposing a heavy duty on the struggling householder, who insures his stock in trade or furniture, and impose other taxes equally objectionable, it seems scarcely equitable that the securities given in the course of the business transacted by building societies should continue privileged. This, amongst other anomalies, it is to be hoped, will be taken into the serious consideration of the Chancellor of the Exchequer, whenever he is prepared to propose a practical reform by the revision of taxation.

MR. WARREN'S LETTER TO THE QUEEN.

ON THE TRIAL OF CAPT. GEO. DOUGLAS.

WE have twice brought before our readers the flagrant injustice done to Captain George

Douglas of the 16th regiment, who was tried by a Court Martial at Guernsey, in April last. Throwing no personal blame on any of the gallant individuals who composed the Court, we strongly protested against its being constituted without the aid of any legal assessor, without any counsel for the prosecution, and with permission to Mr. Warren to assist the accused, as a friend only, and provided he interfered not in the proceedings, and whose assistance, therefore, was confined to written suggestions, or to words of advice whispered in the ear of his client—an officer who stood upon his trial for conduct which subjected him to the forfeiture of his commission and a disgraceful expulsion from the army! We conceive this to be a mere mockery of justice. Mr. Warren, in the work before us, has enlarged forcibly upon the evils of the present Courts Military, and has suggested several useful remedies. Amongst other improvements, it is manifestly necessary that competent legal functionaries should be present at and conduct the proceedings of the Court.

We need not say that the several faculties and qualities of the mind which are essential to the character even of a good, not to say a great or a perfect judge, are rarely combined in one individual; and it has been wisely provided, for the safe administration of justice in this country, that as little as possible should be left to the uncertain discretion of individual judges. In our Courts of Law, the deficiencies of one man are supplied by the skill and sagacity of another; and from the combined learning and wisdom of the Bench, the public is assured of a sound and just judgment. In all serious questions affecting the life, the property, or the reputation of an officer, the proceedings of a Court Martial should be conducted like other legal tribunals. A solicitor should be employed to collect the evidence, to sift its truth, and state the result to the counsel for the Crown. By these means the case would be brought under the consideration of the Court according to the well-known rules of the law, carried out under the responsibility of practitioners of skill and eminence, and presented in a shape fitted for impartial investigation before minds duly trained for the judgment seat.

Moreover, we are entitled to expect that the personages entrusted with the solemn and important duties of a judge should, be chosen from the best qualified class. It need scarcely be said that a judge who has to preside or assist at a Court Martial, should be deeply learned in the Law of Evidence

and the rules which have been long established in our Superior Courts for the investigation of facts and the discovery of truth; he should, of course, also be familiarly acquainted with the practice of Courts Martial, and the decisions by which that practice has been sanctioned by the Courts at Westminster.

The lamentable failure in the trial under consideration, has been owing chiefly to the want of proper legal assistance in the conduct of the prosecution. The glaring anomalies which occurred in receiving *bad* and rejecting *good* evidence could scarcely have existed, and certainly not to the outrageous extent which prevailed in the Guernsey trial, if a lawyer of any experience or eminence in his profession, had been appointed upon the Court.

It has rarely happened, that an advocate dissatisfied with the decision against his client, has made a personal appeal to the higher authorities. When, however, a strong conviction has been felt of the injustice which has befallen the accused, it has not been unusual to assist him in obtaining a revision of the sentence. In the present case Mr. Warren, after the unexpected, and in all respects most extraordinary verdict of the Court, most properly advised a Memorial to be presented, by way of an appeal, to the Duke of Wellington, the Commander-in-Chief of her Majesty's Forces. That memorial, if it had been read by his Grace, must, we think, have produced a review of the decision; but the answer returned by the military secretary at the Horse Guards stated—not that the grounds and reasons of the appeal had been considered—containing important facts and arguments which had not been reported by the Court Martial—but saying merely, that the proceedings of the Court had received the attention of "*the proper legal authority*" prior to their being submitted to her Majesty for her confirmation.—Mr. Warren therefore, in his own name, now addresses himself to her Majesty, and through the medium of the press, to the public at large.

Mr. Warren commences his Letter to the Queen with great eloquence. Both the matter and the manner of the address are well calculated to arrest the attention of her Majesty and her Royal Consort, for in their minds the honour of the army, and the just decisions of the Courts Martial on questions affecting the character of its officers, must ever excite the deepest interest. The Letter thus impressively opens the case:—

"If your Majesty should inquire, with sur-

prise, though I trust not with displeasure, Who is this, approaching my presence unbidden? I dutifully answer, A free, fearless, but loyal Englishman, complaining of a great wrong done to a fellow-subject, under colour of law; and a wrong which your Majesty, the supreme dispenser of justice to your subjects, alone has power to redress. I believe that your Majesty, thus appealed to, would graciously reply,—Speak on, then, boldly and honestly, to Her who sits upon the throne of Alfred: who loves *the people committed to her charge*; and exacts not allegiance without affording protection.

"Only a great and pressing exigency could have induced one of the humblest of your Majesty's subjects to step forth from his obscurity, and thus publicly and directly address your Majesty. Even had he not known, however, the benignant and equitable temper of his Sovereign, a case like the present would have forced him to bring it forward: for the voice of justice is a sublime one, strengthening the feeblest and elevating the humblest who hearing, endeavours to obey it.

"He who has thus ventured to beseech the ear of his Sovereign, believes, in his conscience, that the cause of justice in this country has recently sustained, through a defective system of military jurisprudence, a calamitous defeat.

"An officer, an accomplished gentleman, of ancient and honourable family, in the very flower of his age, after having devoted thirteen years to the faithful and zealous service of your Majesty, in almost every quarter of your world-wide dominions, has been ignominiously expelled from that service, branded as a LIAR. He stood on trial, before his brother officers, with as high vouchers to character, as could have been presented, had it unfortunately been rendered necessary by such a casualty as has befallen him, by any one of themselves. He was, moreover, the eldest son of a general officer, who lately descended to his grave with honour, after half a century spent in the service of three of your Majesty's predecessors; leaving behind him, as his eldest son, the unhappy gentleman to whose case I earnestly implore the attention of your Majesty. His venerable father sleeps calmly in the dust, from which he might start with horror, could he know of the blight which had fallen upon the ancient name inscribed upon his tomb. He had left that name—the unsullied honour of his house—to be in like manner sustained by his son, his successor in your Majesty's service, and the head and representative of his family. That son is himself a FATHER—the father of lovely children, and one of them a SON: but the mere sight of them is agony to him; for they bear, alas! a now dishonoured name, and are the unconscionable offspring of a ruined outcast."

It might perhaps have been more to the interest of our learned friend,—after having well performed his duty at the trial,—if he had not further interfered in this remarkable

case, but left the task of vindication to some chivalrous member of that army to which his client belonged. He has, however, undertaken the duty in a noble spirit of enthusiasm, and has well sustained his reputation by the skilful treatment of a difficult and most important subject:—difficult from the numerous points included in it,—from the various discussions of the case before several tribunals, civil and military, conducted in divers modes of judicial proceeding, and in its consequences of the greatest pith and moment to the honour and character of his client.

We have not space at present to enter upon the several new and important points which Mr. Warren urges in the course of his Letter, in support of a revision of the case; but must add the closing summary of the wrongs of his client:—

"It is of infinite importance, in every point of view, that the administration of military and naval justice should be placed on a sound basis; should be, in all respects, in all stages, open, unquestioned, unquestionable; that the utmost facilities should exist for correcting error; and, above all, that no doubts should be entertained by any one unhappily ordered to be tried before a Court Martial, that he will stand in a COURT OF JUSTICE, which proceeds according to the 'known and established laws of this realm;' and where, above all, he will find the great landmarks and beacons of the Law of Evidence, protecting every one from false accusations, religiously regarded. Were this, indeed, to be otherwise, it would be virtually inscribing over the portals of the Horse Guards, to be gazed at with sunken eye and withered heart, those fearful words—

"YE WHO HERE ENTER! LEAVE ALL HOPE BEHIND!"

Far otherwise, however, is it in this, our free and happy country! where errors in our system of judicature, have but to be clearly pointed out, to be promptly rectified.

"The army which serves your Majesty, is one radiant with glory, reflected from every quarter of the world. Its loyalty, its bravery, its honour, are equal,—and unsurpassed in the history of mankind. We regard it, as does your Majesty, with fond confidence and pride, and a lively anxiety to ensure its welfare. Great as is the distinction of entering your Majesty's service, of forming one in the resplendent phalanx which guards the throne of your Majesty, and the lives and liberties of their fellow-subjects, how fearful to be thrust from it, branded with ignominy! But how far more fearful for any one to be thus dealt with, *UNJUSTLY*! To be stripped of his uniform, to be deprived of his sword, as unworthy ever again to appear in the one, or bear the other; and be yet conscious, with a proud but breaking heart, that he has done nothing to dishonour either, or deserving of his being ban-

nished from the service and presence of his Sovereign!

"Gracious Sovereign! suffer the humblest of your subjects to implore, yet once again, and finally, your Majesty's attention to the unfortunate gentleman who is the victim of these mistaken proceedings. Alas, what is to become of him, suddenly blighted in the bloom of his manhood? What is he to do? Whither is he to go? What honourable life is open to one driven from the army, as guilty of scandalous and infamous conduct? His ancient lineage is now a burthen pressing him into the dust. How can he bear to think of those who have gone before him,—on those who are to come after him,—on *one* whom he had fondly hoped to see his successor in your Majesty's service? God grant him fortitude to sustain him under the present crushing pressure of injustice! May he feel that the eye of his gracious Queen is upon it, and that as she can, so she will, remove it, before interference be too late! Your Majesty has but to speak,—to utter the potent and glorious words,—*LET RIGHT AS DONE!*—and his night will be turned into day; his wilderness rejoice and blossom as the rose. He will look mankind in the face, again; and stand, with fond devotion, once more in the ranks of your Majesty's defenders, ready to shed his blood in your service. But the blood that runs in his veins, the blood that runs in our veins, is the blood of the Saxon and the Norman, and bounds there, intolerant of the mere approach of injustice—injustice which flows also from the radiant presence of our Queen.

"Suffer me at length, Most Gracious Sovereign, to withdraw from that presence, humbly hoping that by no inadvertence have I given your Majesty offence: and that, in your Majesty's clement consideration, honest intentions may atone for error of judgment."

THE LAWS RELATING TO THE LAND TAX.

A very important and able work has just been published on this subject, by Mr. Samuel Miller, the Chancery Barrister. It comprises the enactments relating to the assessment, collection, redemption and sale of this very unequal tax, with a statement of the rights and remedies of persons unequally assessed, and an Appendix containing all the statutes in force.

In the new session of parliament, now near at hand, the subject of taxation in various departments will be necessarily considered, and we therefore call the immediate attention of our readers to Mr. Miller's Treatise and the remedial measures he proposes.

We shall advert in an early number to

the valuable materials here collected for the revision of the law, and consider that Mr. Miller has rendered the greatest possible service both to the legislator and the lawyer, by this timely publication of his labours.

QUESTIONS AT THE EXAMINATION.

Hilary Term, 1850.

I. PRELIMINARY.

1. Where, and with whom, did you serve your clerkship?

2. State the particular branch or branches of the law to which you have principally applied yourself during your clerkship.

3. Mention some of the principal law books which you have read and studied.

4. Have you attended any and what law lectures?

II. COMMON LAW, AND PRACTICE OF THE COURTS.

5. What are the necessary facts to be proved, to obtain an order to hold a defendant to bail, and how are they to be proved?

6. Can a defendant be arrested on a Capias issued under an order to hold to bail, although he has already been served with a copy of a writ of summons in the action, and has entered an appearance according to the exigency of the writ?

7. When a defendant has been arrested on a Capias grounded upon an order to hold to bail, and bail cannot be procured, can the defendant obtain his discharge by any and what other means without surrendering himself to prison?

8. Does an action of debt lie upon a deed under seal containing a covenant for the payment of a sum certain with interest on a given day that has expired?

9. Where an action in debt is brought upon a bond in a penalty conditioned for the performance of covenants, or for the faithful conduct of a party, and the defendant does not plead, but suffers judgment by default, can the plaintiff issue execution at once under the judgment, or what steps, if any, should be taken before execution can be issued?

10. Where the only subscribing witness to the execution of a deed or other instrument under seal is dead, how is the execution of such deed or other instrument to be proved?

11. Where a witness is called for the sole purpose of proving the execution of a deed, or the hand-writing to any written document, upon the trial of a cause, and the party producing the witness has given no notice of his intention to adduce in evidence such deed or document, what is the consequence, as to the expenses of such witness, upon the taxation before the Master of the costs of the cause?

12. May an affidavit in a cause be used in Court or before a judge (not being an affidavit to hold to bail) be sworn before the attorney in the cause or his clerk, each of them being a Commissioner authorised to take affidavits in the country?

13. Where a plaintiff has once tried his cause and obtained a verdict, and a new trial has been subsequently granted, and the plaintiff does not give any fresh notice of trial, can the defendant move for judgment as in the case of a nonsuit, or how should he proceed in order to have the case determined?

14. Where a plaintiff brings an action in one of the Superior Courts for a debt less than 20*l.*, which ought to have been brought in one of the County Courts, can the defendant by any and what means prevent the plaintiff from recovering his costs?

15. When a judge of a County Court exceeds his authority by proceeding upon a plaint where he has no jurisdiction, can any and what steps be taken to prevent his going on, or to prevent the party prosecuting the plaint enforcing the proceedings under it?

16. Where a defendant is under terms by a judge's order to plead issuably, and pleads one or more pleas clearly not issuable, what course may the plaintiff take?

17. Where a plaintiff has discharged a defendant's rule nisi for judgment as in the case of a nonsuit, upon a peremptory undertaking to try within a given time, and has been unavoidably prevented from going to trial according to his undertaking, what course should he take to prevent the defendant from obtaining a rule absolute for a nonsuit, and to acquire the means for trying the cause?

18. Where a cause is at issue, and a material witness so ill as to be unable to attend the trial, and there is danger of the evidence being lost, is any and what course open to the party wanting the evidence of the witness, by which he can obtain the benefit of such evidence?

19. In an action upon a bill of exchange brought by an indorsee against the acceptor, where the bill is drawn payable to the drawer's own order, and by him endorsed to the plaintiff, what evidence is necessary to enable the plaintiff to obtain a verdict, supposing the defendant to plead only that he did not accept the bill?

III. CONVEYANCING.

20. On examining an abstract of title with the title deeds, what should be carefully attended to?

21. The title deeds required to be examined with the abstract are found not to be in the possession of the vendor, but in the hands of a third person in the country; what is the course to be pursued for the examination of the deeds, and at whose expense?

22. In the absence of conditions of sale to the contrary, how is a purchaser to obtain copies of abstracted title deeds or instruments on record, at the vendor's expense?

23. To avoid searching for incumbrances until immediately before the completion of the purchase, what should be done?

24. When do judgments bind leasehold estates, and where should searches be made for such incumbrances?

25. If deeds relate to estates in a register county, when should such deeds be registered, and what may be the consequence from delay in so doing?

26. A. and B. (not partners) are to give their bond to C. for the payment of a certain sum of money, how is the obligation to be framed, that if B. die and leave A. surviving, C. may have a claim upon B.'s estate?

27. Suppose A. and B. are partners, and give their joint bond to C., and A. or B. die, what remedy would C. have against the survivor and the deceased's estate?

28. How is a purchaser of a freehold estate, when conveyed to him, to prevent his widow from being dowerable?

29. If certain lands be conveyed to a purchaser, and no notice be taken in the conveyance of any buildings upon, or mines or minerals under, the land, would such buildings, mines, and minerals pass to the purchaser? State any legal maxim applicable to that question?

30. If a pool or piece of water be granted, what passes by such grant?

31. State what tenures you are aware of, by which lands less than fee simple are held?

32. By what means are the respective kinds of property usually conveyed or transferred?

33. Under what authority may an estate tail be barred, and by whom and in what manner?

34. Suppose there was an outstanding term of years in A. which must be assigned, that A. is dead and appointed B. and C. executors of his will, that C. renounced and B. alone proved the will and died, leaving C. surviving, in what manner and from whom is an assignment of the term to be obtained.

IV. EQUITY AND PRACTICE OF THE COURTS.

35. What are the general subjects for which relief is sought in equity?

36. What is the rule as to the persons necessary to be made parties to a suit?

37. Are there any qualifications of, or exceptions to, this rule?—If so, state them.

38. If a necessary party is out of the jurisdiction of the Court, what is the consequence?

39. How is a suit in Chancery commenced under ordinary circumstances, where the rights of the Crown are not concerned?

40. How, when the suit is on behalf of the Crown only?

41. How, when any other party besides the Crown has an interest in the subject-matter of the intended suit, and what steps must be taken to obtain the Attorney-General's sanction of the suit?

42. Under what circumstances can a foreign state maintain a suit in an English Court of Equity, and by whom should the suit be instituted?

43. State the proceedings by which the cause is brought to issue, and may be set down for hearing where neither party goes into evidence.

44. State the different steps for bringing the

cause to issue when the parties go into evidence.

45. When is it proper after decree to present a petition of rehearing?—When to proceed by supplemental bill in the nature of a bill of review; and when to file a bill of review?

46. In what cases may a married woman plead, answer or demur, separately from her husband, and is any and what step necessary to enable her to do so?

47. State shortly the provisions of the recent acts for the relief of trustees, and of the order of Court by which the practice is regulated.

48. What is the rule in equity as to the purchase by trustees, or a trustee, of the trust estate? and what course would you advise on behalf of a trustee-purchaser in order to assure his title and prevent any after impeachment of it?

49. Is there any limitation in point of time to relief against a trustee for alleged fraud in the execution of his trust?

V. BANKRUPTCY.

50. In order to obtain an adjudication of bankruptcy what facts must be proved?

51. By what means can a compulsory act of bankruptcy be obtained, and by what statute are the proceedings for that purpose prescribed?

52. In what cases will buying or selling not constitute a trading within the Bankrupt Law?

53. If, after a petition for adjudication, the petitioning creditor should take security for his debt and abandon the petition, what consequences would attach to such proceeding?

54. In what cases is it incumbent upon a creditor holding security to realize the security before proving, and in what cases may he prove without realising?

55. Are there any and what means of proving the assumed amount claimed, after crediting the value of the security, before actual realisation? and state what they are, and subject to what conditions.

56. Is there any, and what distinction in the mode of realising a legal as distinguished from an equitable security?

57. Under what circumstances can payments made by a bankrupt after an act of bankruptcy, but before the date of the adjudication, be recovered back?

58. If a lease contain a covenant not to assign, without the landlord's consent, and the lessee become bankrupt, is such covenant available against his assignees?

59. Can a bankrupt lessee relieve himself from the liability to the covenants of the lease, and how is this effected?

60. Can damages for breach of a contract entered into by the bankrupt before his bankruptcy, be proved, and, if not, is the bankrupt liable to be sued after having obtained his certificate?

61. What are the requisites to establish a right in the assignees of a bankrupt to property in his possession at the time of his bankruptcy belonging to another party?

62. In the event of a trustee becoming bank-

rupt, what means has his *cestui que trust* of divesting him of the trust and of obtaining a conveyance or assignment of the trust estate from the bankrupt?

63. If a bankrupt become entitled to any property by descent, devise, or bequest, after the date of the adjudication against him, in whom does such property vest?

64. What are the essential principles which constitute a fraudulent preference?

VI. CRIMINAL LAW AND PROCEEDINGS BEFORE MAGISTRATES.

65. Define concisely the common law offence of perjury, by how many witnesses must it be proved, and is it felony or misdemeanour?

66. How is a peer to be tried for a misdemeanour?

67. Define the common law offence of larceny.

68. If two persons are indicted for conspiracy, and one is found by the jury to be a lunatic, what will be the consequences to those two persons respectively?

69. What is the legal distinction between larceny and embezzlement by persons in the employ of those whom they defraud?

70. Is any common law offence committed by the breach of an act of parliament?

71. What is the distinction between an indictment and a criminal information, and who are *ex officio* entitled to file criminal informations?

72. If a person in prison for a misdemeanour bring a writ of error, does that course alone (pending the decision of the Court of Error) affect him with reference to his undergoing the full term of imprisonment inflicted by the Court below?

73. A person is tried for murder, found guilty by the jury, but a point of law is reserved for the opinion of the judges on the ground of error in the indictment, and subsequently decided in his favour; and a fresh indictment for the same offence being preferred against him, he pleads *autrefois convict*. Is this plea good? State your reasons for your answer.

74. In criminal cases, what is the method of securing the attendance at the trial of prosecutors and all others whose evidence is required?

75. Is a witness entitled upon any grounds to refuse to answer any question put to him by counsel? State the reason for your answer.

76. What privilege is an alien entitled to upon his trial, and if the fact of his being an alien is disputed, on whom does the proof lie?

77. What is the rule of law with reference to the criminality of children?

78. What is a *nolle prosequi*, and in criminal proceedings by whom may it be entered, and, if entered, what is its effect?

79. Is there any difference in the collateral legal consequences of a conviction for misdemeanour and of one for felony?

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Dec. 25, 1849, to Jan. 18, 1850, both inclusive, with dates when gazetted.

Barnes, Richard, and James Kirby, Barnard Castle, Attorneys and Solicitors. Dec. 25.

Birch, James, and Edward Henry Bramah, 6, Great Winchester Street, City, Attorneys and Solicitors. Jan. 8.

Cook, George William Francis, and John Rogers Jennings, 29, St. Swithin's Lane, City, Attorneys and Solicitors. Jan. 4.

Coxwell, Edward, and Robert Harfield, Southampton, Attorneys and Solicitors. Jan. 4.

Darvill, Henry, and Henry Geary, New Windsor, Attorneys, Solicitors, and Conveyancers. Jan. 4.

Dunning, Joseph, and Joseph Stawman, Leeds, Attorneys and Solicitors. Jan. 4.

Freeman, Luke, Thomas Hilton Bothamley, and Francis Benthall, 39, Coleman Street, City, Attorneys and Solicitors, so far as regards the said Francis Benthall. Jan. 8.

Hall, Thomas Cave, and James Gravenor, Deal and Sandwich, Attorneys and Notaries. Jan. 4.

Mansford, Thomas Anstey, and Charles Beaton, Bath, Attorneys, Solicitors and Conveyancers. Jan. 8.

Rodgers, Thomas, and William Pagden, King Street, Cheapside. Attorneys and Solicitors. Dec. 25.

Sewell, Henry, Robert Burleigh Sewell, William Norris, and Charles Wyatt Eatcourt, Newport, Isle of Wight, Attorneys and Solicitors. Jan. 18.

MASTERS EXTRAORDINARY IN CHANCERY.

From Dec. 25, 1849, to Jan. 18, 1850, both inclusive, with dates when gazetted.

Beilby, Thomas Falconer, Hull. Jan. 1.

Brewster, John Thompson, Nottingham. Jan. 1.

Cooke, John, Abingdon. Jan. 1.

Foster, William, Halifax. Dec. 25.

Hargrove, James Sidney, High Petergate, in the City of York. Jan. 11.

Holloway, Benjamin John, Thame. Jan. 4.

Knight, Joseph, Newcastle-under-Lyme. Jan. 18.

Newbould, John, Sheffield. Jan. 15.

Ormond, William, jun., Abingdon. Jan. 1.

Randall, Edward Brodribb, Southampton. Jan. 18.

Walter, Octavius Gardner, Taunton. Dec. 25.

Waterhouse, Thomas, Bilton. Jan. 11.

PERPETUAL COMMISSIONER.

Appointed under the *Fines and Recoveries Act*, with date when gazetted.

Griffiths, Henry Moore, of Birmingham, in and for the Counties of Warwick, Stafford, and Worcester. Dec. 28.

NOTES OF THE WEEK.

EXCLUSIVE AUDIENCE OF THE BAR IN INSOLVENCY CASES.

THE claim made by the Bar to exclusive audience in the County Court of York, in insolvency cases, has been withdrawn. We understand that copies of the memorials presented to Mr. Serjeant Dowling by the Incorporated Law Society, the Metropolitan and Provincial Law Society, and the Law Societies of Yorkshire and Leeds, were forwarded to Mr. Blanshard as the representative of the Bar on this occasion, and we infer that the statements and arguments contained in those memorials have satisfied Mr. Blanshard and his learned friends, that the claim ought not to be persisted in, and we are glad that the question has thus been settled in that important district. We trust the example will be followed at Bristol and Gloucester, where alone, we are informed, any exclusive or even precedence is given in these minor cases. In point of fact, we believe more briefs will be voluntarily delivered than could have been enforced.

LAW APPOINTMENTS.

The Queen has been pleased to make the following appointments:

Thomas Horne, Esq., to be Puisne Judge of the Supreme Court of the Colony of Van Diemen's Land.

Valentine Fleming, Esq., to be her Majesty's Attorney-General for the Colony of Van Diemen's Land.

Alban Charles Stonor, Esq., to be her Majesty's Solicitor-General for the Colony of Van Diemen's Land.

Francis Smith, Esq., to be Crown Solicitor and Clerk of the Peace for the Colony of Van Diemen's Land.

QUEEN'S BENCH.—ARRANGEMENT OF BUSINESS.

This Court will hold sittings and proceed in disposing of the business now pending in the following order:—On Friday, the 1st, and Monday, the 4th days of February next, the *country new trials*. Tuesday, the 5th, Wednesday, the 6th, Monday, the 11th, Tuesday, the 12th, and Wednesday, the 13th days of February, the *special paper*. Thursday, the 14th, Friday, the 15th, and Saturday, the 16th days of February, the *crown paper*; and will also hold a sitting on Tuesday, the 26th day of February, and give judgment in cases previously argued.

RESULT OF THE EXAMINATION.

The Hilary Term Examination of Candidates for Admission on the Roll of Attorneys took place on Tuesday last, the 22nd inst., at the Hall of the Incorporated Law Society. Master Turner presided, and the other examiners were Mr. Lawford, Mr. Maynard, Mr. Pickering, and Mr. Pocock. Three of the Candidates did not attend, and five withdrew during the examination, leaving 89 who brought up their papers in due time. Of these, 81 were passed and 8 postponed.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Duncan v. Lunley. Nov. 30, Dec. 3, 1849.

DEMURRER FOR WANT OF EQUITY.—LEAVE TO AMEND.

Upon appeal from the Vice-Chancellor Knight Bruce allowing a demurrer for want of parties only, with leave to amend, a demurrer for want of equity was allowed, without entering on the demurrer for want of parties, as the bill did not show any case for the interference of a Court of Equity, but leave was given to amend.

THIS was an appeal from an order of the Vice-Chancellor Knight Bruce allowing a demurrer for want of parties, with leave to amend. It appeared that William Clowes took 100 shares of 10*l.* each in the Abney Park Cemetery Company, and that at his death, in 1847, his executors took the shares to the company's offices for registration in their names, when the secretary of the company, John Conquest, inquired whether they were willing to sell 50 at 9*l.* per share, to which the executors agreed. In 1848, the executors received information

from the company that the shares had been sold to one Dyer for 9*l.* 7*s.* 6*d.* per share, but that the proceeds had been absconded with by their secretary. They then filed this bill asking to make the directors liable for the amount so received. Upon a general demurrer for want of equity and want of parties, in not making Conquest or Dyer a party, the Vice-Chancellor Knight Bruce entertained considerable doubts as to the equity of the bill, but allowed the demurrer for want of parties only, with leave to amend; whereupon this appeal was presented.

Bacon and Collins, for the appellants, cited *Davis v. Bank of England*, 2 Bing. 393; *Harrison v. Price*, Barnardiston, 324; *Ashby v. Blackwell*, 2 Eden, 299.

J. Russell and Miller, for the respondent, cited *Coles v. Bank of England*, 10 A. & E. 437.

The Lord Chancellor said, that the bill did not disclose a case for the interference of a Court of Equity, and that the decision in *Ashby v. Blackwell*, cited at bar, did not uphold the present bill. Without entering on the question of want of parties, the demurrer for want of equity would be allowed, but with leave to amend.

Jan. 16.—*Padley v. Lincoln Waterworks Company*—Appeal from Vice-Chancellor Knight Bruce dismissed.

17.—*Ja-re Madrid and Valencia Railway Company*—Order by consent.

17.—*Shallcross v. Weaver*—Appeal dismissed from the Master of the Rolls.

17.—*In re Direct London and Eastern Railway Company*—Petition dismissed with costs.

17, 18.—*Dodson v. Potwell and others*—Appeal from the Vice-Chancellor Knight Bruce allowed, and bill retained until hearing of another cause before the Vice-Chancellor relating to the same matters.

19.—*Shrewsbury and Chester Railway Company v. London and North-Western Railway Company*—Minutes of decrees settled.

19, 21, 22.—*McIntosh v. Great Western Railway Company*—Cur. ad. vult.

22.—*Phillipson v. Gatty*—Part heard.

SHERIFF-COURT.

Lowndes v. Spicer and another. Dec. 15, 1849.

FORECLOSURE SUIT.—ENLARGING TIME.—

TERMS.

The time directed by the Master for the payment of the principal, interest, and costs of a mortgage, was enlarged for six months, upon payment of the costs of suit within a week after taxation, and interest within a fortnight.

Turner and Shapier moved, on behalf of the defendants, John Edward Spicer and Walter Charles Vennings, to enlarge the time from the 17th December to 17th June, 1850, for payment of the amount of principal, interest, and costs, reported by the Master to be due to the plaintiff, Rev. Charles Lowndes, on a mortgage.

Roupe for the plaintiff, contra.

The Master of the Rolls granted the motion upon the defendants paying the costs of the foreclosure suit within a week after taxation, and the interest reported due to the plaintiff within a fortnight, or the foreclosure to be made absolute.

Jan. 16.—*Fallace v. Mc Dougall and others*—Stand over.

16.—*Bapette Collins*—Reference as to incumbrances on property purchased under one of the City of London Improvement Acts—Costs to be paid by the corporation.

17.—*Dodson v. Carpenter*—Reference as to indemnity to executors under testator's will, costs reserved.

18.—*Gregory v. Marychurch*—Exemptions allowed to Master's report.

18.—*Doyle v. Doyle*—Petition dismissed with costs.

21.—*Greenwood v. Pacey*—Held that the testator's estate was bound to account for what he had received under the will.

19; 22.—*Hodgson v. Earl Powis and others*—Donation allowed.

21; 22.—*Read v. Strongways and others*

—One exception allowed and the other referred back to the Master.

Vice-Chancellor of England.

Ex parte Reading, Guildford, and Reigate Railway Co. Jan. 14, 1850.

LANDS' CLAUSES' ACT.—PURCHASE MONEY.—INTEREST.

Held, that interest on the purchase money of lands taken under the Lands' Clauses' Act, will only be payable from the entering into possession, or from such time as it was in the power of the company to have done so.

THE above company having, in October, 1848, taken certain lands near Reading belonging to a Mr. Blagrove, for the purposes of their railway, under the Lands' Clauses' Consolidation Act, gave the bond required by section 85, and paid 95*l.* into Court. The value of the land was assessed in the December following before a jury, at 1,400*l.* The tenants on the land had been compensated and discharged by Mr. Blagrove's agent immediately on the giving the bond and payment into Court, but the company did not commence the works till April 1, 1849. Their engineer, however, admitted the land might have been passed over by the 1st of March.

Bethell and *Gole* now appeared in support of a petition by the company, for the payment out of Court of the 95*l.*

Roll and *Osborne*, contra, contended, that the company were bound to pay interest from the date of the bond.

The Vice-Chancellor said, that the agent had acted wrongly in discharging the tenants, and that the company were only bound to pay interest from the 1st March, 1849.

Miles v. Dursford. Dec. 11, 1849.

INJUNCTION.—SALE BY MORTGAGEE.—NOTICE.

An injunction was granted to restrain the sale of certain houses by a mortgagee where notice of sale was not given in pursuance of the mortgage deed.

THIS was an application *ex parte* for an injunction to restrain the sale of certain houses in Earl Street, Lisbon Grove, which had been given upon certain trusts by a testator to his executor, John Punter; and in the event of his death before the execution of the trust, the plaintiff, Miles, was appointed executor. Punter mortgaged the houses to the defendant, and the mortgage deed contained a power for the mortgagee to sell on giving three months' notice to the executor of the will. Upon the death of Mr. Punter, the plaintiff became the executor, and applied for this injunction on the defendant's having advertised the houses for sale on the 12th December, without giving the required notice.

Bethell and *Nelder* in support.

The Vice-Chancellor granted the motion.

Jan. 16.—*In re Hadleigh Charities*—Master's report confirmed.

Jan. 17.—*King of the Two Sicilies v. Peninsular and Oriental Steam Packet Company.*—Part heard.

— 18.—*In re London Bridge Approaches' Act.*—Order for investment of purchase-money, with costs to be paid by the corporation.

— 18.—*In re Jermy.*—Reference to appoint guardian to infant petitioner.

— 18.—*Esparte Imperial Bank Company.*—Order for reference and winding up.

— 21, 22.—*Heathcote v. North Staffordshire Railway Company.*—Injunction to restrain the company from applying to parliament to abandon branch of railway which they had contracted to make.

Vice-Chancellor Knight Bruce.

Esparte Colman, in re Cambrian and Grand Junction Railway Company. Jan. 18, 1850.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—PETITION.—SUPPRESSION VERB.—COSTS.

An order for dissolution and winding up of a joint-stock company, under the 11 & 12 Vict. c. 45, was discharged with costs where material facts were withheld on the presenting the petition.

An order had been made on the 26th Nov. last, under the 11 & 12 Vict. c. 45, for the dissolution and winding up of the above company. It appeared that the petition on which the order was made, omitted to state that the company had been dissolved in 1846, under Lord Dalhousie's Act, and that a final dividend had been advertised in 1847, and received by the petitioners; that the only party served was Mr. Rodenhurst, who, in August, 1847, inclosed his scrip certificates to the company's secretary, requesting a post-office order for such dividend, which was sent, and the certificates cancelled. This petition was therefore presented by Mr. Colman, one of the committee of management, to discharge the former order.

Lloyd and Serrage in support; Glasse referred to *Esparte Barnett*. 1 De G. & S. 744.

The Vice-Chancellor discharged the former order with costs.

Jan. 16.—*Esparte Alcock and others, in re Weaving.*—Respondent undertook to give bond upon both debts, under the 12 & 13 Vict. c. 106.

— 16.—*Esparte Brook, in re Wills.*—Cur. ad. vult.

— 17.—*Esparte Doyle, in re St. George's Steam Packet Co.*—Order for re-hearing.

— 17.—*Bruce v. Ford.*—Stand over.

— 17.—*Esparte Price and another, in re Patent Elastic Pavement and Kamptulite Co.*—Motion refused with costs to reverse the Master's decision; inserting petitioners on list of contributories.

— 17.—*In re Kilmann's Railway, Locomotive, and Carriage Improvement Co.*—Stand over to next seal.

— 17.—*Wheaton v. North Staffordshire*

Railway Company.—By consent, stand over till hearing, compensation to be paid into Court.

Jan. 18.—*Coombes v. Brookes.*—Order for payment into Court of part of personal estate after satisfaction of costs.

— 18.—*Jones v. Jones.*—Master's report confirmed in favour of purchase-money paid by Trinity Corporation, costs to be borne by the estate.

— 18.—*Esparte Colman, in re Cambrian and Grand Junction Railway Co.*—Order for winding up discharged with costs.

— 18.—*In re Crown and Cushion Loan Fund Society.*—Stand over.

— 19.—*In re John Carr's Charity.*—Petition granted for removal of trustees and appointment of new trustees, to whom the stock and cash to be transferred.

— 21, 22.—*Geach v. Pedler.*—Plaintiff held to be mortgagor and not vendor of mine.

— 22.—*Savery v. Surr.*—Part heard.

Vice-Chancellor Stigram.

Speakman v. Speakman. Dec. 11, 12, 15, 1840, Jan. 11, 1850.

WILL.—CONSTRUCTION.—GIFT OVER.—VOID FOR REMOTENESS.

Where, upon construction of a will, the words of limitation to heirs on a division of the estate at the expiration of 50 years after the testator's decease, extended to the children of grand-children or more remote issue, held, that the gift over was void for remoteness.

THOMAS SPEAKMAN, who died in 1793, by his will, after giving an annuity to his wife *durante viduitate*, and directing the reduction of a mortgage debt, directed that the surplus rents and profits should be divided once in every three years, and, after his wife's death or marriage, once a year equally amongst his eight children, or their lawful heirs, share and share alike, until the expiration of 50 years from his decease, when the executors were to sell the estates, and divide the proceeds amongst the children then living, or any of their heirs lawfully begotten in their stead; "provided, nevertheless, should any of my said children die without lawful issue, such share or shares of those so dying to go to and belong to the survivors or their lawful heirs equally, the whole money arising from the aforesaid sale to be equally divided among my surviving children or their lawful heirs, share and share alike." Upon the death of the widow in 1844, the testator's personal representatives filed this bill for an administration.

Walter, Kn. Parker, Little, Selwyn, Follett, and C. Hall, appeared for the several parties; Cur. ad. vult.

The Vice-Chancellor said, the devise over for the benefit of the children was void for remoteness. (The word "heirs" in the proviso did not apply only to children or grandchildren, but included more remote issue, and the interest of the substituted legatee was nevertheless determined, whether a life being at the testa-

tor's death or within a period of 21 years. *Leeming v. Sherratt*, 2 Hare, 14; *Salisbury v. Petty*, 3 Hare, 86. As, however, the question had been raised by the will, the costs of all parties would be borne by the estate.

Jan. 16.—*In re Loppington Parish*—Order as to costs.

— 16, 21.—*McCalmont v. Rankin*—*Cur. ad. vult.*

— 21, 22.—*In re Direct London, Portsmouth, and Chichester Railway Company, Ex parte Goldsmith*—Order for winding up.

— 22.—*Clay v. Rufford*—*Cur. ad. vult.*

— 22.—*Tipping v. Coates*—Four exceptions allowed and the others referred back to the Master.

— 22.—*Newman v. Sillett*—Part heard.

Queen's Bench.

Gadsby v. Estail. Jan. 12, 1850.

NEW TRIAL.—ADDITIONAL EVIDENCE.

Semble, the Court will not refuse to grant a rule for a new trial for the third time, although the verdicts were both given for the defendant, where there is evidence to go before a jury which was not adduced on the other trials; but it will be on payment of costs by the plaintiff.

THIS action for criminal conversation had been twice tried, and a rule nisi had been granted to set aside the second verdict for the defendant on the ground that the verdict was against evidence. An affidavit was made by the plaintiff and read at the trial, whereby he swore that a letter containing strong expressions of affection for the plaintiff's wife was in the defendant's hand-writing, and an affidavit in opposition was made by the defendant.

Stee, S. L., showed cause against the rule, which was supported by *Hawkins*.

The Court said, that there was no positive rule where two trials had been had, and the verdicts given for the defendant on both occasions, to refuse a third new trial, where the Court were of opinion there was additional evidence to go before the jury; although it was not usual for the Court to persist in granting new trials under those circumstances, as it might appear to invade the province of the jury. On payment of costs by the plaintiff, the rule was made absolute for a new trial.

Jan. 16.—*Reg. v. Inhabitants of St. Giles, Omderswell*—*Cur. ad. vult.*

— 16.—*Regina v. Abergate Canal Company*.—Part heard.

— 17.—*Regina, ex parte Dimes v. Governor of Queen's Prison*—Prisoner remanded.

— 17.—*Campbell v. Hewlett*—Rule nisi on leave reserved to set aside verdict and enter it for the defendant.

— 17.—*In re South Devon Railway Company*—Rule refused for directors to furnish owner with copy of award made in arbitration between him and the company.

— 18.—*Howden v. Smith*—Part heard.

Jan. 19.—*Regina v. Inhabitants of Basingstoke*—Order of sessions quashed and order of justices for removal of two paupers confirmed.

— 21.—*Hay v. Ayling*—Rule nisi to enter verdict for the plaintiff *non obstante verdicto*.

— 21.—*Osterman v. Bateman*—Rule absolute for new trial as against evidence, but without costs.

— 21.—*Doe dem. Howe v. Thornton*—Rule nisi discharged to set aside verdict for the plaintiffs.

— 22.—*Wakeman v. Lindsay and another*—Rule for new trial discharged.

— 22.—*Arden v. Sullivan*—*Cur. ad. vult.*

Queen's Bench Practice Court.

(*Coram Mr. Justice Erle.*)

In re William Daggett Ingledew. Jan. 11, 1850.

ATTORNEY.—CHANGE OF NAME.—ALTERING ROLL.

A motion was granted to enter the name of William Daggett instead of William Daggett Ingledew, although no Royal license had been obtained, where the change was assumed in compliance with the wish of a parent.

THIS was a motion to enter the name of William Daggett only on the roll of attorneys, instead of William Daggett Ingledew, of North Shields, though no Royal license for change of name had been obtained. It appeared that the applicant was desirous to accede to the wish of his mother, whose maiden name was Daggett, and drop the name of Ingledew.

Udall in support, cited *Doe dem. Luscombe v. Yates*, 5 B. & Ald. 556.

The Court granted the application.

Jan. 16.—*In re Padwick*—Rule nisi for Master to review taxation of costs.

— 17.—*Duke of Brunswick v. Gregory*—Rule nisi for amendment of plea, and of judgment entered.

— 17.—*Harrison v. Newton*—Application granted to have this rule argued before the full Court.

— 18.—*Doe dem. Wearing and another v. O'Connor and others*—Rule nisi for judgment against the casual ejector.

— 21.—*Anon.*—Rule nisi on attorney to answer matters of affidavits.

— 21.—*Tucker v. Fox*—Rule for change of venue to adjoining county of Devon from Cornwall.

— 22.—*Regina v. Rix and another*—Prisoners remanded.

— 22.—*In re Anderson and another, ex parte James and another*—Rule nisi on attorneys to pay over money.

— 22.—*Ashford v. Shepherd*—Rule discharged with costs for writ of prohibition to County Court Judge.

* See vide *Ex parte Hayward*, 5 Scott, 712; S. C. 5 Dowl. P. C. 463.

Court of Common Pleas.

Hore v. Silverlock. Jan. 11, 1850.

NEW TRIAL.—SURPRISE.—EVIDENCE.—GENERAL ISSUE.—JUSTIFICATION.

A rule for new trial on the ground of surprise, in consequence of the absence of a material witness, was refused, where there was no affidavit of surprise.

Held, that certain letters were admissible in evidence, under a plea of the general issue to an action for libel, in the report of an action for slander, which was publicly tried, to rebut an imputation of malice in the publication of such report.

Semble, such letters need not be specially pleaded in justification.

A RULE nisi for an attachment having been granted against a witness for not attending, in obedience to a subpoena at the trial before L. C. J. *Wilde*, at the Middlesex Sittings after Michaelmas Term last, of an action for libel against the proprietors of the Nautical Standard and Navigation Gazette, in printing a report of an action of *Hoare v. Dixon*, for slander, tried in 1847, at Croydon, before *Parke, B.*, when a verdict was found for the defendant,

Carter also moved for a new trial, on the grounds of the improper reception, under a plea of the general issue, of certain letters put in evidence to rebut any information of malice, and which reflected more on the plaintiff's character than the report published by the defendant, and which, it was contended, was only admissible under a plea of justification; of misdirection in the learned judge not leaving to the jury the question, whether the alleged libel was calculated to injure the plaintiff's character; and of the absence of a material witness.

The Court said, the rule must be refused. As there was no affidavit of surprise, the plaintiff could not therefore move on that ground; and it appeared from the notes of the Lord Chief Justice, that the question was left to the jury, whether the publication was calculated to be injurious to the character of the plaintiff. With respect to the improper reception of the letters under the general issue, it was competent for any person to give a report of a proceeding publicly tried, which was not preliminary or ex parte, although it might contain libellous statements, provided it was a fair report. The letters were therefore admissible in evidence under the general issue to rebut the imputation of malice, without being specially pleaded, and the rule was refused.

Jan. 16.—*Doogood v. Rose*—Rule refused for new trial.

— 17.—*Moss and others v. Smith*—Rule discharged for new trial.

— 17.—*Robinson v. Burbidge*—Rule nisi to rescind order nisi and order absolute of judge at chambers to charge moneys in the name of the Accountant-General with amount of judgment.

Jan. 17.—*West v. Rowendale*—Part heard.

— 16, 18.—*Steele, executor, v. Clifton*—Part heard.

— 19.—*Harrison v. Watson*—Rule refused to enter verdict for the plaintiff for 25*l*.

— 19.—*In re Daggett*—Application to alter name on the roll of attorneys.

— 19.—*Burnet v. O'Brien*—Rule by consent to strike a special jury in time, or cause to be tried in proper order by a common jury.

— 21.—*Doe dem. Church v. Pontifex*—Rule absolute for a nonsuit.

— 22.—*Leishman v. Londonderry and Enniskillen Railway Company*—Rule nisi to pay over balance under an award.

— 22.—*Hutchinson v. Lewis*—Rule nisi to amend return to certiorari.

— 21, 22.—*Kinceird v. Willis*—Part heard.

Court of Exchequer.

Farnley v. Coombes and another. Jan. 11, 1850.

ARBITRATOR OR UMPIRE.—TAXATION OF COSTS.

Where an arbitrator or an umpire fixes the amount of his own remuneration, held, that it must be reasonable, or the fees will be referred to an officer of the Court for taxation.

A RULE nisi had been obtained on behalf of the defendants, Messrs. Coombes and Freshfield, directors of the Globe Insurance Company, to set aside the award of the umpire, in a reference by agreement between the parties, relating to a policy of assurance, so far as related to the sum of 216*l*. for each of the arbitrators' services, and 20*l*. for his own, or to refer such costs to the Master for taxation. It appeared that there were seven meetings, at which witnesses were examined, and nineteen other meetings on the question.

Watson, Q. C., and *Henderson*, showed cause against the rule; *Martin, Q. C.*, in support, was not called upon.

The Court said, the arbitrator had strictly no power to assess the amount of remuneration for himself, although fees were generally named by professional arbitrators, but if the charges were unreasonable in amount, they would be examined by the officer of the Court. Here the charges appeared to be outrageous, and the rule would therefore be absolute for a reference to the Master to tax the fees awarded.

Jan. 11.—*Gell v. Lord Curzon*—Rule nisi on plaintiff to give security for costs.

— 16.—*Greenland v. Chaplin*—Rule nisi to set aside verdict and for new trial.

— 16.—*Chapman v. Reeves*—Rule refused for new trial.

— 17.—*Athins v. Minnear*—Rule refused for new trial.

— 17, 18.—*Notridge v. Ripley*—Cur. ad. vult.

— 22.—*In re Thorne's recognisances*—Rule refused to discharge recognisances.

Court of Bankruptcy.

(Coram Mr. Commissioner Holroyd.)

ANON. Dec. 11, 1849.

TRADER DEBTORS' SUMMONS:—PARTICULARS OF DEMAND.—ENTITLING.—BANKRUPTCY LAW CONSOLIDATION ACT.

Where the particulars of demand were not entitled in the form required by the 12 & 13 Vict. c. 106, the heading "*Bankruptcy Law Consolidation Act*" being omitted, a trader debtor's summons was dismissed with costs, although the party appeared in person.

THIS was a trader debtor's summons under the 12 & 13 Vict. c. 106. The party appeared in person.

Duncan, in support; Lawrence, contra, objected, that as the particulars of demand were not entitled "*Bankruptcy Law Consolidation Act*," as directed by schedule (G.) of the act, it was irregular.

The Commissioner said, that the entitling

was an important part of the form, as it informed parties under what statute the proceedings were taken, and dismissed the summons with costs.

Court of Criminal Appeals.

Jan. 19.—*Regina v. Bond*—Cur. ad. vult.

—19.—*Regina v. Smith*—Conviction affirmed.

—19.—*Regina v. Cluderay*—Conviction affirmed.

Court of Exchequer Chamber.

Jan. 22.—*Weedon v. Woodbridge*—Judgment of the Court of Queen's Bench reversed.

—22.—*Royal Exchange Insurance Company v. M'Sweeney*—Judgment of the Court of Queen's Bench reversed.

—22.—*Gosling v. Veley and another*—Judgment of the Court of Queen's Bench affirmed.

—22.—*Grey v. Friars*—Judgment of the Court of Queen's Bench reversed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see

Jurisdiction of County Courts, p. 87.

Poor Law and Magistrates' Cases, 108.

Courts of Common Law:

Construction of Statutes, 128, 146.

Principles and Jurisdiction, 165.

Appeals from Revising Barristers, p. 189.

Law of Attorneys and Solicitors, p. 229.]

LAW of PROPERTY and CONVEYANCING.

ACCUMULATION.

Theilsson Act.—Testator directed the income of certain portions of a trust fund to be paid to A., B., C., &c., for their lives; and, on the death of the survivor of them, the fund to be sold, and the proceeds thereof, and also the proceeds which should have accumulated in respect thereof, to be divided amongst other persons: Held, that though there were accumulations of the income of the fund which had arisen after the expiration of 21 years from the testator's death, the case was not within the *Theilsson Act*, (29 & 30 Geo. 3, c. 98). *Corporation of Bridgnorth v. Collins*, 15 Sim. 538.

ANNUITY.

1. *Property Held*.—A testator gave to his wife an annuity or clear yearly rent charge of £200, clear of all taxes and deductions: Held, that the annuity was subject to the property tax. *Wall v. Wall*, 15 Sim. 512.

2. An annuity given by a will, forming no charge upon land, but being personal only, is not within the statute of Limitation, 18 & 4 V. c. 27, s. 42. *Rock v. Callen*, 6 Hare, 531.

Case cited in the judgment: *Phillips v. Munnings*, 2 Myl. & Cr. 309.

BUILDING SOCIETY.

Purchasing Member. Mortgage Deed. Terms of Redemption.—A member of a building society purchased shares, in respect of which a sum of money was advanced to him, and he executed a conveyance to the trustees of the society, to secure the payment, and observance by him of all subscriptions, fines, and regulations of the society; and, in default, the trustees were to sell, and retain out of the proceeds, all such subscriptions and other payments as should be then due, and should thereafter become due in respect of those shares, calculating the probable duration of the society; and it was agreed, that all moneys which should thereafter become due, should be considered, as due at the time of the sale. By the rules of the society, a purchasing member was entitled to redeem, upon payment of the difference between the amount secured by the mortgage, and the amount of his subscriptions, and his share of the profits. No profits had been made in this case: Held, that the plaintiff was not entitled to redeem, upon payment of the difference between the sum advanced and the amount paid by him for subscriptions, &c.; but only upon payment of all subscriptions which would become payable during the probable duration of the society; and that those future subscriptions were to be paid in full at the time of redemption. *Mosley v. Baker*, 1 H. & T. 301.

CHARITY LAND.

See Tenant Right.

Whereas a husband is decedent by his marriage settlement, to give, devise, bequeath and

secure, to his widow, an annuity for her life after his decease, to be levied, raised, and paid to her by his heirs, executors, and administrators, and the husband afterwards died intestate, it was held, on the authority of *Crouch v. Stratton*, 4 Ves. 391, that the widow's share of the husband's personal estate under the statute of distributions, was not to be taken by her as a performance of his covenant, either wholly or *pro tanto*. *Salisbury v. Salisbury*, 6 Hare, 526.

HEIR.

See Will, 6.

HUSBAND AND WIFE.

Election.—A testator gave a legacy to his daughter, a married woman, on condition that she should relinquish her claim to a reversionary chose in action under his marriage settlement. *Quere*, whether she could elect to take the legacy against the will of her husband? *Wall v. Wall*, 15 Sim. 513.

LEGACY.

1. **Interest.**—A testator made a settlement on his daughter, who was adult, and gave her a legacy by his will. Held, that the legacy did not bear interest from the death of the testator, but only from the end of the 1st year after that event. *Wall v. Wall*, 15 Sim. 513.

2. **Construction.**—Testator bequeathed a fund in trust for his next of kin, of the surname of *Crump*, who should be living at the decease of A. B. A lady, whose maiden name was *Crump*, was the testator's sole next of kin at A. B.'s death; but she married after the testator's death, and then took and ever afterwards bore her husband's surname, which was *Carpenter*.

Held, nevertheless, that she was entitled to the fund. *Carpenter v. Bott*, 15 Sim. 606.

Quere cited in the judgment: *Pyot v. Pyot*, 1 Ves. B. 335.

3. **Uncertainty.**—Testatrix gave to each of the infants and minors for the time being, resident in the several hospitals, or in the vicinity of Canterbury, whose yearly income should not exceed 25l., an augmentation or yearly increase of 5l. for ever.

Held, that the bequest was void for uncertainty, principally on the ground that the amount of the fund to be appropriated to answer the bequest was not specified by the testatrix, and could not be determined. *Plant v. Warren*, 10 Sim. 626.

See *Residuary Legatee*.

LEGACY DUTY.

Probate.—A made a mortgage in fee to secure a sum lent to him by the trustees of his marriage settlement. On his death, his daughter became entitled to the equity of redemption of the mortgaged estate, as his heir, and, under his marriage settlement, to the mortgage money. The trustees then conveyed the estate to her, subject, expressly, to the equity of redemption, and did not release her father's covenant for repayment of the money. Afterwards she granted an annuity to M., and, as a security for it, conveyed the estate and assign-

ed the money to a trustee for him. By her will she devised the estate, but did not dispose of her personal estate: Held, that the money was subject to probate and legacy duty. *Swabey v. Snaghey*, 15 Sim. 502.

MORTGAGE AND MORTGAGEE.

Loss of deeds.—**Interest.**—A made a mortgage to B., and delivered to him the title-deeds of the estate. Some years afterwards, A. gave B. notice of his intention to pay off the mortgage at the end of six months, but did not pay the money until after that time, owing to B. not having offered him any indemnity that was satisfactory to him in respect of B. having lost some of the deeds. B. then brought an ejectment for the estate, whereupon A. filed a bill to redeem.

The Court decreed a redemption, and ordered that a sum which A. had paid for interest accrued on the mortgage-money after the expiration of the six months should be repaid to him; that B. should give him an indemnity to be approved of by the Master, and also pay the costs of the ejectment and of the suit. *Lord Middleton v. Elliot*, 15 Sim. 531.

Cases cited in the judgment: *Stokes v. Robson*, 19 Ves. 385; 3 Ves. & B. 51; *Smith v. Bicknell*, 3 Ves. & B. 51, n.

See *Building Society*.

PROBATE.

See *Legacy Duty*.

PROPERTY TAX.

See *Annuity*, 1.

PURCHASER.

Consideration.—**Without notice.**—**Possession.**—**Tenancy of estate.**—W. insisted, in his answer to the plaintiff's bill, that he was a purchaser for valuable consideration, without notice of the plaintiff's title; but admitted that, previously to his marriage, in 1843, with his late wife, R., who died in 1846, he had notice that the plaintiff's late wife had, before her marriage, agreed to give up to R. a legacy of 2,000l., and that, in lieu thereof, R. had devised to the plaintiff's late wife certain real estates, being the real estates conveyed to him by R. under a settlement executed on the occasion of the marriage of W. and R. A subsequent agreement in writing was entered into in 1835, previously to the marriage of the plaintiff and his late wife, (who died shortly afterwards,) between R. and the plaintiff's late wife, by which the plaintiff's late wife absolutely released R. from the payment of the same legacy of 2,000l., and in consideration thereof, R. agreed, by deed or will, to convey or devise absolutely her real estates to the plaintiff and his late wife, to take effect on R.'s decease. The plaintiff was in possession of the estates at the date of W.'s marriage with R.: Held, that W. had that sort of knowledge which affected him with constructive notice of that which, (if the facts were proved to exist,) would show that the plaintiff had an equitable title by contract to the devised estates.

The case of *Taylor v. Baker*, 5 Price, 306, recognised and confirmed. *Penny v. Watts*, 1 H. & T. 266; 1 M.N. & G. 150.

See *Building Society*.

RESIDUARY LEGATEE.

Testator gave all his real and personal estate to his brother James and his nephew Malcolm, their heirs, executors, &c., in trust, by or out of his personal estate, or by sale, mortgage, or other disposition of his real estate, or any part thereof, to pay his sister 1,500*l.*; and, after giving 1,000*l.* to his brother James, he left to his brother Donald 2,000*l.*, and added,—"and also to be my residuary legatee." After which he gave 200*l.* to another of his sisters.

Held, that Donald was the testator's residuary legatee as well as legatee. *Evans v. Crosbie*, 15 Sim. 600.

Cases cited in the judgment: *Day v. Daveson*, 12 Sim. 200; *Davenport v. Cockman*, 2 M. & K. 607.

TENANT RIGHT.

Charity land.—An old tenant from year to year of charity lands had, by an outlay of capital, &c., greatly enhanced its value. The old tenant and A. B. were both willing to take a lease at a rent exceeding the value, but the rent offered by A. B. was the largest. The Court held that, notwithstanding the fair claims of the old tenant, the benefit of the charity must be regarded, and that A. B.'s offer ought to be accepted, if the excess of the rent offered by him exceeded the amount of compensation to which the tenant was equitably entitled on being turned out.

Reference, under the circumstances, directed, to ascertain whether any and what compensation ought to be paid to an outgoing tenant from year to year, for his outlay of capital on charity lands. *Attorney-General v. Gains*, 11 Beav. 63.

TIMBER.

See *Waste*.

TRUSTEES.

Power to appoint new trustees.—A testator empowered his wife, (who was a *cestui que trust* under his will), during her life, and, after her death, the then surviving or continuing trustee of his will to appoint any new trustee or trustees, as often as any of his first or future trustees should die, &c. One of the trustees named in the will died before the testator.

Held, that the power did not authorize the widow to appoint a new trustee in the place of the deceased. *Winter v. Rudge*, 15 Sim. 596.

See *Accumulation*.

VALUABLE CONSIDERATION.

See *Purchaser*.

VENDOR AND PURCHASER.

1. *Misdescription*.—*Compensation or indemnity*.—One of the conditions of sale, under a decree, was, that in case of misdescription in the particulars of sale, the purchaser should

accept compensation. The Court intimated that a purchaser could not be compelled to accept compensation where the particulars of sale described the property purchased as "let on lease for 21 years to, and in the occupation of B. and Son," the fact being that the property had been demised for 21 years to T., and had been assigned by him, for the residue of the term, to B. alone, one of the firm of B. and Son, who were the joint occupants thereof. And also, that the Court had no power to compel the purchaser to accept an indemnity in such a case. *Ridgway v. Gray*, 1 H. & T. 195.

2. *Contract*.—A's agent wrote to B., "I am directed to offer you for the premises 3,000*l.*," &c. B. replied, "We accept your offer. If you approve of the enclosed, sign the same, and we will, on receipt of the deposit, sign you a copy." B. filed a bill for specific performance, and A. did not produce the enclosure: Held, that the two letters constituted a valid contract intended to be carried into effect by the enclosure; and that, though it did not appear that the enclosure had been approved of, still that this did not affect the prior valid contract. *Gibbins v. North Eastern Metropolitan Asylum District*, 11 Beav. 1.

3. *Title*.—*Evidence*.—Evidence as to the heirship of daughters. *Hemming v. Spiers*, 15 Sim. 550.

VOLUNTARY SETTLEMENT.

Power to revoke constructive covenant.—In 1832, Sir R. R. transferred 2,197*l.* stock into the names of trustees, and executed a voluntary deed declaring the trusts in favour of his daughter and her children. In 1840, he executed a second deed, which, without noticing the 1st deed, recited that he had transferred a sum of 2,197*l.* stock into the names of these trustees, and proceeded to declare trusts somewhat different, and gave a life interest to his wife.

Held, 1st, that the stock intended to be settled by the two deeds was the same; 2ndly, that the trusts of the first deed could not be altered by the second; and 3rdly, that the second deed failing to operate, gave no right against the assets of the settlor. *Newton v. Askew*, 11 Beav. 145.

WASTE.

Equitable.—*Tenant for life and remainderman*.—*Timber*.—Ornamental timber protected, though the manor-house had been pulled down, and the bill did not complain of that act. *Morris v. Morris*, 15 Sim. 505.

WILL.

1. *Uncertainty*.—Testator bequeathed all his property in the Austrian and Russian funds, and also that vested in a Swedish mortgage security. The testator, at the date of his will, had several sums vested on different Swedish mortgages: Held, that the bequest was not void for uncertainty, but that all the sums vested on Swedish mortgages, passed by it. *Richards v. Patterson*, 15 Sim. 501.

2. *Survivor or trustees*.—Testator be-

queathed a fund in trust for Elizabeth D. for her life, and after her decease, in trust for four of her children, whom he named: "or the survivor of survivors of them, for their maintenance, until they severally attain the age of 21 years, when each of them shall be entitled to claim a fair proportion of the principal," only one of the children survived the mother.

Held, that that one was entitled to the whole fund, though two of the deceased children attained 21. *Dorville v. Wolff*, 15 Sim. 510.

3. *Second cousins*.—Testator bequeathed a fund in trust for his second cousins.

Held, that a first cousin once removed was not entitled to a share. *Corporation of Bridgnorth v. Collins*, 15 Sim. 541.

4. *Construction*.—*Debt*.—Testator gave J. P. and I. P. 10*l*. each for mourning, and 100*l*. to J. T. N., his executor, for the trouble he would have in the execution of the will. By a codicil, he gave legacies to other persons, and directed, that if they or any other person who had a legacy left them by any will, should owe him any sum or sums of money at his decease, it should be considered as part of their legacy. At the testator's death, J. T. N. owed the testator 4,000*l*., and two of the other legatees also owed him sums much greater than the legacies.

Held, that the testator intended to remit their debts, as well as to give them their legacies. *Hyde v. Neate*, 15 Sim. 554.

5. *Construction*.—Testator bequeathed a fund, in trust for his wife and daughter for their lives successively, with remainder in trust for the children of his daughter; and if at her death she should leave no children living, in trust to sell the fund and pay A. and B. 500*l*. each, if they should be alive at the time: and he bequeathed the remainder, to and among his heirs at law, share and share alike. The daughter was the testator's heir at his death. She died a spinster.

Held, that her personal representative was entitled to the fund as part of her assets. *Ware v. Rowland*, 15 Sim. 557.

6. *Heir*.—*Issue, devisavit vel non*.—*Forfeiture*.—A testator seized of large real estates, made a will by which he gave certain benefits to his daughter, who was his heir and a married lady; and declared that if she or her husband, or any person on their or either of their behalf, should dispute his will, or if any proceedings should be taken by any person whatsoever, by any possible result of which any estate or interest could be, in any way, attainable, by his daughter or her husband, of larger extent than was intended for them by the will, and she or her husband should not formally disavow, stay, or resist such proceedings to the best of their ability, then he revoked the benefits given to her.

The testator was the subject of a commission of lunacy when he made his will, and continued so until his death.

In a suit by the trustees of the will, to establish it, the plaintiffs proved that the testator was of sound mind when he made the will; and

there was no evidence to the contrary. Nevertheless, the Court directed an issue *devisavit vel non* to be tried, the plaintiffs to be plaintiffs at law, and a gentleman (with whom the husband had entered into a covenant, during the infancy of his wife and in the lifetime of her father, to make a settlement of any estates that she might thereafter become entitled to) to be the defendant at law. *Cooke v. Turner, Cooke v. Cholmondeley*, 15 Sim. 611.

7. *Limitation by words of reference*.—Testator bequeathed certain houses in trust for his granddaughter, Martha, for her separate use for her life, and on her decease, in trust to apply the rents for the maintenance of her children then living, and, when they should all attain 21, in trust to sell and divide the produce amongst them equally; and in case Martha should die without leaving issue, to divide the produce amongst such of the testator's grandchildren thereafter named, as should be living at her decease. And the testator, by three separate and subsequent clauses, bequeathed other houses in trust for his granddaughters, Charlotte, Sarah, and Harriett, for their separate use for their lives, and repeated, after each clause, "and, after her decease, in trust for the issue of her body in the same manner and subject to the same conditions as herein-before expressed in the bequest to my granddaughter Martha." In a subsequent part of the will, he declared that, if all his said granddaughters should die without leaving issue, all the houses mentioned in his will should fall into the residus of his estate.

Charlotte died leaving issue. Harriett died without issue.

Held, that the houses bequeathed in trust for her went over to Martha and Sarah, as being the only grandchildren of the testator at her death. *Doughty v. Selwell*, 15 Sim. 640.

8. *Construction*.—A testator entitled to a copyhold estate in remainder expectant upon the determination of the life estate of his wife in the same premises, by his will gave the income of all his property, wherever situate, or of whatsoever kind, to his wife for her life; and, at her decease, he gave all the property then left by him, and of which she was to have the income for her life, to his children; and on his wife's death, or second marriage, he directed his trustees to receive the rents and dividends arising from the estate and effects he should die possessed of, and to apply the same in the maintenance of his children until the youngest should attain 21: *Held*, that the interest of the testator in remainder in the copyhold estate passed by his will. *Ford v. Ford*, 6 Hare, 486.

Cases cited in the judgment: *Say v. Creed*, 5 Hare, 580; *Bradley v. Barlow*, 5 Hare, 589.

9. *Construction*.—The tendency of modern decisions is to read the different clauses of the same will referentially to each other, unless they are clearly independent. *Ford v. Ford*, 6 Hare, 492.

See *Legacy*.

BUSINESS OF THE COURTS.

NISI PRIUS CAUSE LISTS.

REMANETS FROM THE SITTINGS AFTER MICHAELMAS TERM, 1849.

Queen's Bench.

London.

D. Richardson Capes and S.	Mackay Mackmore	(Inj.) (Inj.)	Brooks Burton and others, exas- tors, &c.	Pro. Baxendale and Co.
Keene	Dean	(Inj.) S. J.	Grace	Dt. Alban and B.
Vincent and S.	Franklin (stayed)	S. J.	Davis and others	Dt. Smith
Lewis and L.	Bynd (stayed)	S. J.	Harper	Covt. Wm. Bevan
W. H. Green	Bond (Inj.)	S. J.	Stanley	Pro. Few and Co.
Phillips	Hartley & another (stayed)	S. J.	Manton	Pro. Few and Co.
Pearce and Co.	Robertson (stayed)	S. J.	Dargan	Van Sandau & Co.
C. B. Wilson	Gibbs (stayed)	S. J.	Abardson	Covt. Morris
Jordeson	Cundell (stayed)	S. J.	Harrison and others	Covt. Gilbert & Co.
Starling	Newman (Inj.)	S. J.	Ferry	Pro. Chester and Co.
Cox and Co.	Jegon	S. J.	Long	Hughes, K. and M.
Linklater	King, Clk.	S. J.	Liquorish	Dt. Hartley
R. K. Lane	Howard	S. J.	Moore	Pro. Howell
Lucena	Lucena	S. J.	Clements	Pro. Tilson and Co.
R. and W. G. Roy	Edaile, (P. O.)	S. J.	Allan	Pro. Hughes, K., and Co.
Tilson and Co.	Copper Miners' Co.	S. J.	Fox and others	Pro. Simpson and Co.
Tatham and Co.	Barker	S. J.	Gibson	Pro. Murray
Bartholomew	Healop	S. J.	Hepworth	Pro. Marten and Co.
R. and W. G. Roy	Hagshaw	S. J.	Elliott	Ias. Vandercroon and Co.
Same	Same	S. J.	Caulfield	Pro. Freshfield
Same	Same	S. J.	Pearse	Pro. Same
Stretton	Underhill and another	S. J.	Cleaver	Pro. Same
Reed and Co.	Green and ora., assesa., &c.	S. J.	Darby	Pro. Wright and J.
Hook	Griffin and another	S. J.	Beresford, Esq.	P. I. James
Gamlin and S.	Banks	S. J.	The Western Gas Light Company	Dt. Amory and Co.
Symes and Co.	Price and others	S. J.	Kirkman and another	Pro. Phillips and Sons
Maples	Griffiths	S. J.	Hicks	Ca. Rutherford and Son.
Same	Elliot and others	S. J.	Von Glehn	Pro. J. E. Fex
Burkitt	Austin and another	S. J.	The Manchester, Sheffield, and Lincoln Railway Company	Pro. Cheere
Young and Co.	Whitmore and [another, assignees, &c.	S. J.	Kraenther and another	Pro. Milne, P. and Co.
W. B. Cooper	Husband and another	S. J.	Cattlin	Pro. Crowder and M.
Wilkinson and G.	Mingays, clk.	S. J.	Wilkin	Dt. In person
Hughes, K. and M.	Whittlesey	S. J.	Biggs and another	Pro. Chamberlayne
Same	Hutton	S. J.	Castelli	Pro. Darke
Bennett	The Queen	S. J.	Cooper and others	Pro. Oliverson and Co.
Tatham and Co.	Lloyd	S. J.	Underwood	Indict. Gaut for defendant —Wilson and Cooper
Rush	Towler	S. J.	Stephenson	Pro. Amory and Co.
Tatham and Co.	Barker	S. J.	Bousfield	Dt. Flaggate and Co.
Fisher and Co.	Tripp	S. J.	Clarke	Pro. Van Sandau and Co.
W. B. James	Clay and another	S. J.	Rosenberg	Ca. Cressy
G. H. Maruden	Russell, exor.	S. J.	Watts	Dt. Bevan and G.
John Cobb	The Queen	S. J.	The Count de Torri	Pro. Brokenridge
Hook and Co.	Gerard, admix., &c.	S. J.	Levington	Indict. Wire and Co.
Baines	Smythies	S. J.	James	Ca. Taylor
Same	Same	S. J.	Same	Ca. Meyrick
Ripplingham and K.	Turrell	S. J.	Charley and another.	Trov. Meyrick
Bingle and Co.	Mounsey, (P. O.)	S. J.	Shaw	Ca. Baxter and Co.
Clowes and Co.	Baddeley and another, ex- ecutors &c.	S. J.	Cartwright	Pro. Harbin and W.
Young and Son	Lake	S. J.	Crane	Dt. White and Co.
Holmes	Wing	S. J.	Don	Dt. Pullen
Dolman and S.	Kirby	S. J.	Abbott	Pro. Pinniger
Hook	Conyngnam and ora.	S. J.	Macgregor	Pro. Turner
Hart	Whiteman (pauper)	S. J.	Bishop	Pro. Tilleard and Co.
G. Rutherford	Robertson	S. J.	Phillips	Cov. Lovell
Maples and Co.	Anderson and others	S. J.	Aylwin	Pro. Oliverson and Co.
Orchard	Heard	S. J.	Campkin	Pro. Same
				Dt. J. H. F. Lewis

In person
T. M. Parker
Tatham and Co.
Tucker and S.

Marsden
Collins and wife
Mowatt
Lyon
Hotson
S. J. James
S. J. Lord Depinoq
Messam

Dt. In person
Tres. Humphreys
Pro. Palmer and Co.
Pro. Philp

Common Pleas.

London.

J. J. Blake	Boady	S. J. Mangled	From. Young
Marten and Co.	Callender & another	S. J. Gibson and another	From. R. Ellis
Miller	Roach and another	S. J. Grylls and others	From. J. & J. H. Linklater
Druce and Sons	Dickson	S. J. Ziahis and another	From. Oliverson and Co.
Phillips and Voss	Boyd	S. J. Thornton	From. R. Ellis
S. Walters	Edwards & others	Parker	Ca. H. Walker
Wilde and Co.	Follett and others (Com-		
	mission)	S. J. Delaney	From. Morgan
Phillips and Son	Thomas and another	S. J. Thomas	From. H. Thomas
J. W. J. Dawson	Ellis	S. J. Moore	From. Tilson and Co.
Cottrell	Hughesden (Com-		
	sion)	S. J. Jardine	From. J. C. & H. Freshfield
Vandercom and Co.	Price, jun. and ors.	S. J. Marshall	From. Hughes, K. & M.
Jenkyn	Cocks	S. J. Moore	From. Tilson and Co.
Same	Cocks and another	S. J. Same	From. Same
Same	The Count De Morel	S. J. Shadbolt	From. Same
Same	Godley	S. J. Moore	From. Same
Same	Cartwright	S. J. Shadbolt	From. Same
Same	Young	S. J. Same	From. Same
Oliverson and Co.	Bold and another.	S. J. Clatton	From. Gregory and Co.
J. May	Wilson	S. J. Preston	Ips. Frost
Landor	Harvey and anr.	S. J. Johnson and another	Ca. Seward
J. Jenkyn	Frere	S. J. Moore	From. Tilson and Co.
Same	Allen	S. J. Same	From. Same
Surr and Gribble	Hoyle and another	S. J. Enthoven	From. Crowder and M.
Fyson and Co.	Dearie and others	S. J.	
Linklaters	Edwards and others, as-	Hedderson and anr.	Ca. Murray
	signees	S. J. Mason	From. Raven and Co.
Cattrell	Spartals and ors.	S. J. Bedecke and ors.	From. Oliverson and Co.
R. and W. G. Roy	Lyne and anr.	S. J. Melhuish and anr.	From. J. E. Fox
Druce and Sons	Thompson and anr.	S. J. Elliot	Dt. & Beckett
Amory and Co.	Taylor, P. O.	S. J. Kempe	From. Hill and Heald
A. Goddard	Waters	S. J. Spicer	Dt. Lethbridge and M.
M. Lewis	Hassell and uxr.	S. J. Hammond	Ca. Cutler
Wilson and Co.	The Electric Telegraph		
	Company	S. J. Brett and anr.	Ca. Sidney Smith
Same	Same	S. J. Same	Ca. Same
Same	Same	S. J. Same	Ca. Same
Ashurst and Son	Morrison	S. J. Chadwick	From. Sturmy and S.
Wilde and Co.	Garth, clk.	S. J. White, clk.	From. R. C. Barton
Asher	Graham	Rein	Ca. Taylor
F. West	Merrall	S. J. Killarney and Valencia	
		Halfway	From. Elmalie
Taylor and S.	Markwick	Birley and ors.	Dt. & Duce, Fox
Condon	Bright	S. J. Richardson	From. Shield and H.
Minet and Smith	Picciotto and another	Perget and another	Dt. W. Murray
H. Hunt	Drake	Ruding	Dt. Tatham
Phillips and Sons	Western Gas Light Co.	Brown	Wiglesworth
Robinson and H.	M'Lean	S. J. Leeming	Dt. Mourlyas and R.
A. Jones	M'Curley	S. J. Port of London Ship	
		owners Loan and As-	
		surance Company	Cort. J. Chapple
Goodwin and Co.	East Anglian Rail. Com-		
	pany	S. J. G. Burge	Cort. W. Fisher
Edwards and R.	Ricketts and others	Natkiwell	Sci. fa. Gregory, F. & Co.
R. Watson	Joyce	S. J. Barnewall, (P. O.)	From. Amory and Co.
Phillips and Sons	Gibbs	S. J. Flight	Prov. Crosley and Co.
W. J. Carpenter	Colmer (a pauper)	Berry, sen.	From. Shield and H.
Stroughill	Roy and wife	Smith	From. Tilson and Co.
Fyson and Co.	Dearie and others, as-		
	signees	S. J. Henderson and another	Ca. Murray
Yeung and H.	Gaskill	Barnbridge	E. Smith
Walters and Sons	Stimes	Lettis	From. Stark
Bristow and T.	Lindsay	Coe	From. Clark and D.

C. H. Clarke	March	S. J. Higgins and another	Prom. Sharpe, F. and J.
Same	Walford	Thompson	Dt. Needham
A. Jones	King and others	Aylwin	Prom. Cox and Stone
Marten and Co.	M'Callum	Ward	Dt. C. Browne
Wright and B.	Waddington	Fletcher	Prom. H. H. Hall
Biggonden	Biggonden	S. J. May	Prom. Church and L.
W. J. Holt	Harrison	Watson	Dt. M. Lewis
J. H. Benbow	Randle	Mees	Dt. Wheelock
Lawrance and P.	Chadless	S. J. Gardner and another	Prom. Maples and Co.
Wontner	Caffey (a pauper)	S. J. Bone	Ca. Newton and S.
L. Jacobs	Tappin	S. J. The City Steam-boat Co.	Ca. Newbon and E.
S. Hardman	Hole	Champion	Prom. Vallance and V.
Cotterill	Adams and others	Phipps	Prom. Goren
Hutchinson and B.	Pickering	Jolly	Tres. Fearley
G. Hensman	Partridge	Prole	Prom. H. H. Hall
C. Blake	Mills and others	Greene	Im. Butler
Hutson	Myers (a pauper)	Simon Marks	Trov. Kingston and
Ashurst and Son	Massi	Field	Dt. Price

Exchequer.

London.

James Johnston	Tarte	S. J. Barnes	Pro. Young and Co.
Le Blanc and Cook	Richards and another	S. J. Gledstones and others	Pro. Symes and Co.
Miller and Carr	Jones and another	Clements	Pro. Messrs. Hyde
Crowder and M.	Heath and others	S. J. Smith and others	Pro. M'Leod and S.
M. Sangster	Brooks and another	S. J. Wilder, extrix.	Pro. Lethbridge and M.
Lepard and Co.	Barrett	S. J. Hoggart and another	Pro. Wood and B.
Milne and Co.	Cocker	S. J. Rogers	Covt. Gregory
Nicholson and P.	Ehrensperger	Anderson	Pro. E. J. H. and J. Lawford
Ashurst and Son	Pase	S. J. Miller	Pro. Miller and H.
Same	Same	S. J. J. H. Attwood	Pro. Rixon and Son
Wilson and H.	Edwards and others	S. J. Da Costa and another	Ca. Purrier and W.
Lawrance and P.	Edwards and others, assignees, &c.	S. J. Morris	Dt. A'Beckett and S.
Miller and Carr	Jones and another	Lyne	Pro. C. and H. Hyde
Warnesford	Reynolds	S. J. Story	Treas. Wood and F.
A'Beckett and Co.	Wood	S. J. Rowcliffe	Tro. Buchanan
Tucker and S.	Barlett (pauper)	S. J. Boul	Ca. Burkitt
Oliverson and Co.	Krahmer	S. J. Ditchburn	Dt. Bischoff and Co.
Purrier and W.	Hamilton and anor.	S. J. Bentinck	Pro. Hale and Co.
Walton	Goldner	S. J. Thomas	Pro. Cox and Stones
Chilton and Co.	Dewar and another	S. J. Saunders and another	Cov. Johnson and Co.
M'Leod and S.	Wakley and others, assignees, &c.	S. J. Crow, P. O., &c.	Dt. & Dtns. Newburn & J.
Miller and Carr	Miller	Burt	Pro. E. W. George
White and B.	Lamotte and others	S. J. Cooke and another	Dt. Clarke and Co.
Hill and M.	Horton	Earl Devon and others	Ca. Milne and Co.
Same	Pooley	Browne	Pro. Emmett and K.
Philipps and V.	Stoane, extrix.	S. J. Morrison	Cov. Bevan and G.
Milne and Co.	Upsher	Trundle	Dt. Dafaur
Mardon and P.	Edwards and others, assignees, &c.	Bartholomew	F. Issue, J. H. Taylor
Selby and M.	Foulkes	Hirst	Pro. Lane
Tatham and Co.	Bank of Barcelona	Marrietta	Pro. C. Walton
F. Blake	Story	Fishes and others	Ca. Hayne
J. E. Fox	Warren	S. J. Vignoles	Pro. Palmer and N.
H. Weeks	Doe d. Pantan	Pope	Ejt. Wilkin
Holt and A.	Burton	Cameron Coalbrook Steam Coal and Swansea and Loughor Railway	Pro. Elderton
G. Parsons	Wymark	Fleet and another	F. Jas. Lacey and Co.
W. Hartley	Leeds and Thirk Railway	Lang	Dt. Freshfield and Co.
Harris	Nichols	Alsop	Dt. Surr and G.
Beasett	Gillman	Edwards	Pro. A. McA'Low
J. Appleton	Deeley	Ainger	Pro. Cornthwaite and W.
S. Smith	Miggs	Thrals	Pro. R. and J. Russell
Thorndike	Woods, admix., &c.	Biggs and another	Ca. Darke
Crowder and M.	Demerara Railway	S. J. Armstrong	Dt. Sharpe and Co.
Rhodes and Co.	Brown and others, assignees, &c.	Shotton and another	Pro. C. Bouts

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, FEBRUARY 2, 1850.  
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COMMENCEMENT OF THE SESSION OF PARLIAMENT.

THE Session which commenced on Thursday last, the 31st January, may be expected to comprehend in its course, no inconsiderable number of subjects of professional interest. Looking even at the many important measures which were postponed in the last session, and of which there are already indications of revival, we need not apprehend that "our occupation will be gone," or that we shall be relieved from addressing our brethren on numerous matters which deeply affect their interests.

Considering the movements which have lately taken place regarding the landed interest, in various parts of the country, it may be expected that the Laws of Real Property and Practice of Conveyancing will come prominently under consideration. Short Statutory Forms of Deeds will probably not be again attempted—seeing the signal failure of former efforts; but a General Registry of present Titles and future Deeds may perhaps be discussed. Until, however, the Real Property Commissioners have made their report, we cannot suppose that government will favour any premature plan for materially altering the present system.

The subject of Charitable Trusts of a limited (if not an unlimited) amount, will doubtless in some form be revived; and it must be admitted, that the expensive machinery of a Chancery suit is ill adapted to numberless small charities throughout the kingdom, which, if properly administered, might be beneficial to the objects for which they were created. We anticipate, therefore, that some economical scheme will be devised, by which an investigation may take place into the nature of these trusts—their past administration,—and the superintendence of their future management. These

investigations will throw open a large field for the useful exertion of the solicitors engaged in them.

The Bill for the repeal of the Annual Certificate Duty on Attorneys and Solicitors, will be again brought forward as early as possible by Lord Robert Grosvenor, with whom a deputation from the Incorporated Law Society has already communicated. This Bill will apply to England and Wales only, because of the registration which has been so usefully established under the 6 & 7 Viet., c. 73, for the consolidation and amendment of the Law of Attorneys and Solicitors. It will be necessary that similar Bills be introduced for Ireland and Scotland, and that due provision be made for preventing the frauds which might take place, by unqualified persons practising in the names of, and continuing to take out the certificates of deceased or retired attorneys. The most strenuous efforts should now be made by the whole profession in the three kingdoms to support the application.

We may next mention that a new Bill has already been printed, of portentous magnitude, comprising a new consolidation of Bankruptcy Law, resembling Lord Brougham's proposed code of the last session. This never-ending subject of modern legislation shall receive our earliest attention, whenever it shall make its appearance on the table of either House.

The practitioners in the country may also expect that a general measure will be renewed for the consolidation and amendment of the Laws relating to Highways, by which the appointments of professional men under the existing Trusts may be materially affected.

Our readers will concur with us that the Copyholds Enfranchisement Bill should be taken up by the Government, and a fair adjustment effected of the respective claims of the lords of manors, their stewards, and

the copyholders, to the advantage of the community at large, and, consequently, of the profession.

One of the postponed Bills of last session, in which a considerable number both of barristers and solicitors are directly, and a large number indirectly, interested, will no doubt be again introduced. We mean the Railway Accounts Audit Bill. It will probably, as before, comprise a clause for the taxation of all law charges, and we advise that large class of our readers whom it concerns, to make due preparation for the measure.

We understand that a Bill of great extent has been prepared and is now under consideration; for the consolidation and amendment of a large branch of the Criminal Law. This may concern only a small part of our readers, but it will be requisite that the Law Societies should examine and consider the various clauses which it contains, for it not unfrequently happens that dangerous provisions are introduced into Bills which pass unnoticed.

Many other Bills were postponed in the last, which may probably be revived in the present session, and to which attention should be called. Amongst these we may mention the following as proper to be watched:—the Admission of the Evidence of Parties,—the Conveyance of Trust Property by an Order of Court instead of a Deed,—the Assignment of Life Policies,—the law of Landlord and Tenant, &c. On these and all other subjects of professional interest, we invite the communications of our readers both in town and country.

PAROCHIAL RATING OF PUBLIC COMPANIES.

THE systematic and expensive litigation arising out of the law of settlement was undoubtedly a scandal and reproach to legislation. The determination of the question which of two parishes was bound to maintain a pauper, frequently cost more to both parishes than the expense incurred in supporting the pauper for the remainder of his life. If this objectionable system has not been put an end to, it is confidently hoped it is materially modified and its evil consequences sensibly diminished by the act 11 & 12 Vict. c. 31, introduced by the president of the Poor Law Board, (Mr. M. T. Baines,) for the amendment of the procedure in respect of orders of removal and appeals. Whilst settlement cases have dimi-

nished in number, however, another branch of poor-law litigation has been rapidly increasing. Railway, bridge, water, gas, and similar companies are struggling to have the amounts at which they are respectively assessed to the poor-rates reduced, and this endeavour is generally met by the parochial authorities with determined opposition. It may be conceded, perhaps, that the tendency of the public mind is, that property in the hands of associated bodies should contribute its full quota *at least* to local burthens. On the other hand, the depressed condition of railway property, and the competition to which other property administered by companies is just now subjected, or threatened with, sufficiently accounts for the anxiety manifested to resist any increase, and, if possible, effect a diminution, of the sums which incorporated companies are called upon to contribute to the relief of the poor. The unsettled and unsatisfactory state of the law, as regards the rating of public companies, it is to be feared, augments and encourages the contentions suggested by conflicting interests. The principle of rating established by the Parochial Assessment Act, 6 & 7 Will. 4, c. 96,—that the rate shall be made upon an estimate of the net annual value of the several hereditaments rated,—though sufficiently clear and simple when applied to ordinary cases, creates much difficulty and uncertainty when applied to enterprises so extensive and complicated as those adverted to. The "net annual value" is defined by the act of parliament to mean, "the *rent* at which the subject-matter of the assessment might reasonably be expected to let, from year to year, free from all usual rates and taxes, tithe commutation, rent-charge, (if any,) and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, (if any,) necessary to maintain it in a state to command such rent." The rent at which a house or a farm might reasonably be expected to let from year to year, taking into account its situation, condition, and capacity to accommodate or produce, may, perhaps, be always ascertained with sufficient exactitude. But how is it possible to calculate, with any approach to accuracy, what annual rent a solvent tenant might reasonably be expected to give for such colossal properties as the London and Birmingham Railway, or the Bridgewater Canal, or the New River? Assuming that a market is to be found containing bidders who are able and willing to undertake the management and risk of such

gigantic undertakings as tenants, and that the rent is fixed and ascertained, the question remains, how is this rent to be apportioned to the various parishes in which the property is locally situated? for as each parish through which a railway or canal runs, or a water company receives or distributes the supply of water, contributes to the earnings the supposed amount of which is the basis upon which a solvent tenant would undertake to pay the assumed rent, it follows that each parish is entitled to some share of the amount to be levied in respect of the aggregate rental. The apportionment of the rental amongst several parishes upon an estimate of the actual amount received in each parish can scarcely be considered just in principle. It sometimes happens that a railway running through three parishes, represented by the letters A., B., and C., may have its stations in parishes A. and C., and no station—and therefore no actual receipt—in parish B., although the traffic in parish B., and the extent of land occupied by the railroad in that parish may equal, or even exceed, the amount of traffic and the land occupied by the railroad in either of the adjoining parishes. If the rating was to depend upon actual receipts within the parish, however, it is clear that parish B. would not be entitled to any share of the sum to be contributed by the railway company to the support of the poor. The difficulties above suggested do not comprise a tithe of those already experienced by the Court of Queen's Bench in applying the principle which the legislature has laid down in the Parochial Assessment Act as the only principle upon which a valid rate for the relief of the poor in England and Wales can be assessed. Considering the varied and dissimilar circumstances, objects, and incidents of fixed property, held and occupied by public companies, it is matter of congratulation that the several cases decided since the 20th Sept. 1837, (when the Parochial Assessment Act came into operation,) whilst they disclose the difficulties which the Court of Queen's Bench had to contend with in adapting and accommodating the broad and comprehensive principle propounded by the legislature, furnish various safe and intelligible rules for the application of that principle to any given state of facts.

The act of parliament having declared that the rate is to be estimated according to the annual rent, the next step was, to determine what was the subject-matter of the rent, which must depend upon the an-

swer to the question, in respect of what is the party charged rateable? The answer furnished to this question, as regards public companies, is, that they are rateable as occupiers of land, for the improved value of the land.¹ The same principle of rating must be adopted, whether the party rated be owner and occupier or occupier only. The stat. 3. & 4. Vict. c. 89, expressly prohibits the rating of any inhabitant as such inhabitant in respect of his ability derived from the profits of stock in trade or any other property, to the relief of the poor; but it expressly leaves unaffected the liability of any occupier of lands or houses to be taxed under the provisions of the 43 Eliz. and the 13. & 14. Chas. 2. It is not in respect of the profits, but of the occupation, the party is rateable, and in determining the amount the Court looks only at the existing value of the subject-matter of the rate, and regards neither the nature of its source or its permanency.²

The general principle of rating being determined, the next question that arose was, how the amount of rent was to be ascertained where the property had never been demised at a rent, and from its nature was not likely to be the subject of competition between persons desirous to become tenants. In such cases it is clear that the rent must be guessed at or assumed. The most obvious foundation for a just estimate of rent in cases of this nature, however, appeared to be a calculation of the actual gross income arising out of the premises, deducting the various expenses to which a tenant in occupation would necessarily be subject, and making a further deduction for the expense of renewing or reproducing where the subject of the rate is of a perishable nature, as well as an allowance for tenants' profits. As might be supposed, the wide field to which such an investigation leads, when the subject is the profits and expenses of a great public company, and the nature of the inquiry, independent of its extent, renders it peculiarly unsuitable and inconvenient as matter of judicial investigation. In nearly all the recent cases brought from the Quarter Sessions, the deductions to be allowed from what were assumed to be the gross profits formed the principal subject of dispute; and in all these cases it appears to

¹ *Reg. v. Corporation of Bath*, 14. East, 609; *Reg. v. Trustees of the Duke of Bridgewater*, 9 B. & C. 66, and *The Queen v. The Cambridge Gas Light Co.*, 8 Ad. & El. 75.

² *Reg. v. The London and South-Western Railway Company*, 1 Q. B. 586.

have been admitted, that to the deductions, under the respective heads of poor-rates, taxes, tithes and rent-charge, expressly enumerated, must be added others comprehended under the words "the probable average annual costs of the repairs, insurance, and other expenses (if any) necessary to maintain them [meaning the rateable hereditaments] in a state to command such rent." It has long been felt and admitted that no adequate machinery exists in the Courts of Law for the investigation of intricate and complicated accounts. This is so generally understood, that when a question of account is necessarily brought before the Courts in the course of an ordinary action, the parties, upon the suggestion of the Court and under its sanction, constantly, though often very reluctantly, submit the decision of the matter in dispute to an arbitrator. Rating cases have now become almost exclusively matters of calculation. The principle upon which they are to be determined is sufficiently established, and it would seem to be expedient that some means should be devised by which such cases could be adjusted, more satisfactory and less expensive than by appeal to the Quarter Sessions, followed by a case to the Court of Queen's Bench. The able and learned president of the Poor Law Board cannot fail to enhance his reputation as a practical reformer, if he turns his attention to this important subject, and devises any means by which questions of rating can be adjusted and determined without the inconvenience and loss of time which attends the decision of such cases under the existing system.

PRACTICE OF THE COUNTY COURTS.

ADVOCATES IN INSOLVENCY CASES— YORKSHIRE DISTRICT.

At the County Court held at York, on Saturday, the 26th instant, before Mr. Serjeant Dowling, the Judge of the Yorkshire Circuit, Mr. *Blanshard* withdrew his application on behalf of the Bar to exclusive audience in insolvency cases.

The Judge said that as the practice varied so much at the different County Courts, he should, after consulting the higher authorities, make a rule on the subject. He had not read the memorials from the Law Societies, as the gentlemen of the Bar had not presented any statements in writing, and he would not read the memorials unless with the consent of the Bar.

Mr. *Manstead* assented to the memorial being read.

NEW FORMS OF PRACTICE.

We understand that a Commission has been or will soon be issued, under the authority of the Act of last session, 12 & 13 Vict., c. 101, s. 12, to frame general rules concerning the practice and proceedings in the County Courts. Five of the County Court Judges are to be appointed, the rules are to be certified to the Lord Chancellor, and submitted to three of the Common Law Judges, including one of the Chiefs; and, when approved, laid before Parliament.

We would recommend the practitioners in these Courts to make their suggestions as early as possible.

MANCHESTER LAW ASSOCIATION

ANNUAL REPORT OF THE COMMITTEE.

THE Annual Meeting of the Manchester Law Association was held on Friday, the 11th January; Mr. *R. M. Whitlow* in the chair. The following Report was read:—

"The Committee of Management beg to present to the members of the Manchester Law Association a report of their proceedings during the past year, and in doing so to state that, at an early period of their duties, bills were introduced into parliament which at once claimed their anxious attention, fraught as they were with provisions new both in character and design, and calculated deeply to affect the interests alike of the profession and the public.

"Amongst various proposed alterations in the law, a bill was brought to into the House of Commons by Mr. Henry Drummond, entitled, 'The Transfer of Real Property Bill,' having for its principal objects the introduction of a system of optional registration, the abolition of the present practice of conveyancing, and the establishment of titles by a very adventurous alteration of the present law of limitations of actions as regards real property; this bill was referred to a committee of the house; but so questionable in principle was its design, and so crude and imperfect were its provisions to carry the design into effect, that your Committee felt some surprise at its attaining to a second reading: a petition against it, very numerous signed, was entrusted to the Solicitor-General, who had ably exposed its defects, and from him your Committee subsequently learnt, what they were prepared to expect, that no further steps had been taken to promote its passing into law.

"Another bill, entitled 'The Conveyances of Real Property Amendment Act,' introduced by Lord Brongham, had for its object the extension to deeds and other written instruments

the provisions of a former act (8 & 9 Vict. c. 119,) for taxing bills of costs in respect of such instruments, and with reference, not to the length, but only to the skill and labour employed and responsibility incurred in the preparation thereof. This bill passed the House of Lords, but no member took charge of it in the House of Commons. Your Committee did not think it necessary to offer it any opposition.

"A bill was brought into the House of Lords by the same noble lord, having for its object the consolidation of the criminal law of this kingdom. The importance of the measure was equalled only by the number of its clauses, and it would have received the best attention of your Committee, but learning as they did, that it would not be proceeded with during the session, they suspended a consideration of its provisions. Every probability exists that it will be again introduced into the house in the forthcoming session, and if so it will claim the anxious attention of the successors in office of your Committee.

"The measure, however, which especially engaged the attention of your Committee, was the 'Bankrupt Law Consolidation Bill.' This, on its receipt, was transferred to the bankruptcy sub-committee; and the diligence given by them to its provisions is well evidenced by their report, which was adopted by your Committee, and of which printed copies were forwarded to the members of the association, to several members of the Houses of Lords and Commons, to various law associations, and also to commercial societies in Manchester. Your Committee also prepared and forwarded to Mr. Page Wood, M. P., a petition in support of the amendments suggested by the report; this was presented by him, and referred to the Select Committee of the House of Commons, to whom the bill had previously been referred. Two members of your Committee, moreover, attended in London upon the Attorney-General and other members of the Select Committee, and fully explained the views of the association on the subject. The bill subsequently passed into law, and is, on the whole, a great improvement; but your Committee still entertain an opinion that, had their suggestions been adopted to a greater extent than they were, the law would have established a still more just relation between debtors and their creditors, and would have provided for a more economical distribution of a debtor's estate than is at present secured. The effect, however, of the various alterations made in the bill by the Select Committee of the lower house, after it had received the sanction of the House of Lords, has been to destroy the consistency with each of the several clauses, and to introduce errors of various kinds, and so numerous, as, in the opinion of your Committee, to render necessary another act 'to explain and amend' it; and this we cannot but reprobate as one of the greatest evils attendant upon modern legislation.

"A learned Commissioner has recently submitted to your Committee 'Observations on

the District Courts of Bankruptcy,' for their consideration. The reply they had the honour to present suggested the necessity of a return, showing the receipts in each bankrupt's estate, and the appropriation in detail of the money so received, as a requisite preliminary to the preparation of the rules of practice now under consideration. The learned gentleman has deemed this, and other portions of the reply, of sufficient importance to have determined him to communicate with other learned Commissioners, in different parts of the country, on the subject. Several other bills, affecting the interests of the profession and the public, were introduced into parliament during the last session, and received the attention of your Committee; but, inasmuch as they were subsequently not proceeded with, all active steps, either to promote or resist their adoption, were suspended.

"Your Committee were, in May last, invited to afford information and assistance towards effecting alterations which are felt to be necessary for the enlargement of the jurisdiction, and improvement in the practice and proceedings of the Court of Chancery for the county palatine of Lancaster; and they were at the same time informed that a desire existed on the part of Lord Campbell, the Chancellor of the Duchy, and of Mr. Page Wood, the newly-appointed Vice-Chancellor of the Court, to afford their aid in carrying great improvements into effect; the matter received the earnest attention of the sub-committee to whom it was referred, but their duties were suspended by a communication in the following month that no legislation on the subject could be attempted during the session; there exists, however, no doubt but that a bill will be introduced soon after the next meeting of parliament; and inasmuch as an opportunity will thus be afforded to the profession of expressing their opinion as to the importance of securing, through the medium of this Court, an expeditious and economic means of administering and winding up accounts and assets in the hands of executors and trustees, as well as other advantages, your Committee cannot too earnestly press upon the special attention of their successors in office a matter so momentous to the interests of the community in this populous district.

"With respect to the annual certificate duty, your Committee had hoped that some decided step would have been taken during the last session towards effecting its repeal. Petitions for this purpose were sent up for presentation to parliament from every part of the kingdom, and active co-operation was afforded by the Council of the Law Institution and the Committee of the Metropolitan and Provincial Law Association; but, for reasons given by Lord Robert Grosvenor, (who had kindly taken charge of the bill,) all further efforts were suspended until the next session, when it is hoped that an object so long and so reasonably desired by the profession, as an act of justice, will be conceded by the legislature.

"Your Committee have to state that, in compliance with resolutions passed at a special general meeting of the members of the association, in July last, a memorial to the council of the borough of Manchester was prepared, respectfully urging, for reasons therein fully set forth, the advisableness of the Council reconsidering a then recent arrangement made by them for the conduct of the prosecutions and the conveyancing business of the corporation, by a gentleman holding the important and, as it ought to be, the independent office of borough coroner. The presentation of this memorial was undertaken by Mr. Counsellor Clarke, and it received the decided support of himself and several other members of the municipal body; but, in a communication afterwards received from him, your Committee were informed that he had failed to obtain a reference thereof to a committee of the council for consideration.

"Your Committee have, during the year, had their attention directed to a case—one of a series which they regret to say have but too frequently presented themselves of late on trials *ad nisi prius*—of counsel urging causes into arbitration against the express instructions of the attorney and the wishes of the client, and of returning their briefs in the event of non-compliance: this system of compulsory references is at once a denial of the right which every one possesses of a trial by jury, and a fruitful source of delay, expense, and disappointment to a suitor; and whilst your Committee fully admit that there are a large class of cases more fitted for reference than trial, yet they cannot too strongly express their conviction that when, either by the express instructions of a client, or the exercise of a sound discretion on the part of an attorney, a cause is taken into Court, it is not properly within the province of counsel, who has received his brief and been paid his fees, thus practically to prevent a plaintiff or defendant from obtaining the verdict of a jury, and this, too, very frequently from motives of mere personal convenience. Your Committee have been in communication with several law societies in the kingdom on the subject, and they are unanimously of opinion that some efficient steps should be taken to prevent the continuance of so great an evil.

"Your Committee beg, in conclusion, to state that the members of this association have increased during the past year, and that they continue to receive cordial co-operation and friendly assistance in various matters affecting the general interests of the profession from both the Council of the Law Institution and the Committee of the Metropolitan and Provincial Law Association, and their knowledge of the benefits which this latter youthful, but now vigorous, association is calculated to confer upon the profession at large, fully warrants them in urging its claims upon all their members from whom it has not yet received support."

Mr. Thomas Taylor was appointed president;

Mr. Frederick Thomas, of Manchester, and Mr. Thomas Somerscales, of Oldham, vice-presidents; Mr. R. M. Whitlow, treasurer; and Mr. James Street, honorary secretary, for the ensuing year.

We must reserve our report of the professional topics discussed at the annual festival for a future number.

THE CASE OF WM. HENRY BARBER.

THE MASTER'S REPORT.

THIS application for the renewal of the certificate of Mr. William Henry Barber, to enable him to practise as an attorney, was made on Monday last, the 28th January. Mr. Serjeant Wilkins and Mr. Lush appeared for Mr. Barber, and Sir Frederic Thesiger and Mr. Bovill for the Incorporated Law Society.

Master Turner read his Report as follows:—

"In this case a rule was made on the 31st of January, 1849, whereby, upon reading certain affidavits of Mr. Barber, and the paper-writing thereto annexed, and upon hearing Sir Frederic Thesiger of counsel for the Incorporated Law Society, and Mr. Serjeant Wilkins of counsel for the said William Henry Barber; it was ordered that the application of the said William Henry Barber to renew his certificate to enable him to practise as an attorney of this Court, should be referred to one of the Masters of this Court to inquire therein and report thereon to this Court.

"In pursuance of the above rule, the application of the said William Henry Barber has come before me, as one of the Masters of this Court, and I have been attended thereon by Mr. Maugham, the Secretary of the Incorporated Law Society, on behalf of that Society, and by Mr. Stevenson, as attorney for Mr. Barber, and also by Mr. Barber himself.

"The cases brought before me divide themselves into two branches.—1st. Four cases which have been called the Bank Forgery Cases; and, 2ndly, several other cases which have been called the Malpractice Cases. So far as affects the Bank Forgery Cases, it has not been denied that they are properly the subject-matter of inquiry under the rule, but so far as affects the Malpractice cases, it has been contended before me, that they do not come within the scope of the rule, and ought not to be inquired into. It appears that the latter cases were not in the knowledge of the Law Society when Barber's application to be allowed to renew his certificate was made to the Court, but were brought under the notice of the Society in consequence of that application, and the proceedings upon it appearing in the public newspapers of the day. It has been contended for Mr. Barber, that his application to the Court was made under the rule of Court of Easter Term, 1846, by the provisions of which it was necessary that he should give a term's notice

of his application for the renewal of his certificate, in order that the Judges should have the means of inquiring as to the circumstances under which the applicant had omitted to commence, or had discontinued to practise, and as to his conduct and employment during the time of such omission or discontinuance; but considering that the Court has at all times a jurisdiction to inquire into the conduct of its officers, and that it appeared upon Barber's affidavits in support of his application, that his discontinuance to practise had arisen from his apprehension on several charges of felony, and his subsequent conviction and transportation upon one of those charges; it has appeared to me that the Court could not intend the inquiry to be limited to the conduct and employment of Barber during his discontinuance to practise, more especially as such a limitation would prevent an inquiry touching his conduct in the Bank Forgery Cases; and therefore, I have thought proper to enter upon what have been called the Malpractices Cases, and to report to the Court thereon; but in order that Barber may not be thereby prejudiced, I have made a separate Report upon the latter cases, so that that branch of my Report may be shut out in case the Court should be of opinion that those cases ought not to have been inquired into.

"The Bank Forgery Cases are four,—Stewart's Case, Slack's Case, Hunt's Case, and Burchard's Case.

"Stewart's and Slack's cases were both tried. In the other two cases bills of indictment were found, but neither of the two latter cases were tried.

"In Stewart's case, Barber was indicted together with one Joshua Fletcher and one Georgiana Dorey, for feloniously inciting one Susannah Richards, then deceased, to forge a certain administration bond. The case was tried before the late Mr. Baron Gurney, at the Central Criminal Court in April, 1844. It appears by the evidence which has been laid before me, that Fletcher obtained information from one William Christmas, (who at the time he gave the information, was a clerk in the Bank of England, and who was guilty of a breach of his duty in giving that information,) that one John Stewart, formerly of Great Marlow, in the county of Bucks, gardener, and who died in 1827, had been possessed of 51*l*. Long Annuities, and that by reason of no application having been made for the payments due thereon for 10 years, the said Long Annuities had been transferred to the Commissioners for the Reduction of the National Debt. Fletcher having ascertained that Stewart was dead, fraudulently put forward the said Susannah Richards as sister of Stewart, under the assumed name and description of Elizabeth Stewart, and by false evidence enabled her to obtain administration to the effects of the deceased, and by virtue of such administration afterwards to procure from the Bank of England a transfer into her name of the said 51*l*. Long Annuities, and payment of the sum of 739*l*. 10*s*. being the unclaimed payments on

the said annuities, from the 10th Oct. 1826, to the 10th Oct. 1840. The transfer of 51*l*. Long Annuities into the name of Elizabeth Stewart was made on the 20th Oct. 1840, and on the 22nd of that month the said sum of 739*l*. 10*s*. was paid to her at the Bank of England. Georgiana Dorey, who was the daughter of the said Susannah Richards, was a party to the fraud, and Barber was also charged with being so. Upon the trial, a verdict of guilty was given against Fletcher and Dorey, but Barber was found Not Guilty, and as no circumstances have been brought forward before me which were not in evidence before the jury upon the trial, it appears to me that Barber is entitled to the benefit of his acquittal, and that the matter ought not to be further inquired into. It appears to me, however, that I ought to bring before the Court a matter not affecting Barber's guilt or innocence, in the charge against him, but affecting his conduct as an attorney of the Court. It appears that the duty payable to government in respect of the estate of the intestate, was paid into the hands of Barber; the exact time when it was so paid does not appear, but my impression is, that it was so paid on the 22nd Oct. 1840, being the day of the payment to the pretended Elizabeth Stewart of the 739*l*. 10*s*. before mentioned, or about that time; and it thereupon became the duty of Barber to pay over the same to government at the Legacy Duty Office at Somerset House, but he never did so, nor has the duty ever been paid at all. Barber states in an affidavit, sworn by him on the 15th May, 1849, that he believes it to be true, that it (the amount of the duty aforesaid) was originally paid to him, but he also believes that it was, immediately on its being applied for, paid over either to Fletcher or to one Griffin, (the latter having been applied to for the same from the Legacy Duty Office, in consequence of having been one of the sureties in the administration bond); but in my judgment there is no ground for supposing that Barber paid over the money to either of these parties; the evidence rather points the other way. The duty not having been paid, letters were written from the Legacy Duty Office respecting the same. Griffin was applied to by letters on the subject; he appears to have gone thereupon to Georgiana Dorey, and to have been referred by her to Barber; he also sought out Fletcher, who, on the 20th July, 1842, wrote a letter to Barber on the subject, in which, after stating that an application had been made to Griffin for the payment of the legacy duty in the case of Mrs. Stewart, he says,—'The legacy duty in that case I perfectly recollect was to be paid by you, she having left, by my request and in my presence, the money for that purpose with you, which, it appears, by some means payment has been neglected. I did not see this Mr. Griffin, but I perfectly recollect that he was one of the bail for Mrs. Stewart at the Commons; how he came to make me out in place of you, is a mystery; as I really know nothing of him, perhaps you will have the kindness to see to this matter, as it appears

that Mr. Griffin is threatened with legal proceedings.' Griffin also called upon Barber: his account is—'I went, but did not see him the first time. I went again, I think the next day, and saw him. I told him I had come respecting a letter I had left the previous day with his clerk; he told me he was then in treaty with the Stamp Office respecting the duty being paid, and I should hear no more about it. If I did hear any more about it, I should forward the letter to him if I got it from the Stamp Office.' The evidence, instead of showing any application to Barber to hand over the money to Fletcher or to Griffin, appears to show an application to him (Barber) to pay it; and even if it could be considered probable that Barber did hand over the money when applied for to Fletcher or Griffin, and I am right in my impression that Barber received the money in Oct. 1840, for the purpose of its being paid by him to the Legacy Duty Office, no explanation is given why Barber retained it in his hands down to July, 1842. It is true that Fletcher, Griffin, and Georgiana Dorey are worthless persons, but still, looking at all the circumstances, I see no reason to doubt the correctness of their statements on this subject.

"*Slack's Case.*—In this case Barber and Fletcher were indicted with William Saunders, Lydia Saunders, and the said Georgiana Dorey, for feloniously inciting a certain evil-disposed person, unknown, to forge a certain will, with intent to defraud Anne Slack; and in a second count, Lydia Saunders and Barber were charged with uttering the said will, knowing it to be forged, and the other prisoners were charged as accessories before the fact: there were also several other counts in the indictment, but it is not material to state them. It is sufficient to say, that Barber was convicted upon the second count, and that all the other prisoners (except William Saunders) were also convicted upon one or more counts of the same indictment. William Saunders was acquitted, but pleaded guilty upon another indictment preferred against him at the same sessions, for feloniously inciting a certain evil-disposed person to forge a certain testamentary writing, purporting to be the last will of Mary Hunt, and was sentenced to transportation for seven years, and was transported accordingly. The trial of Barber and the other prisoners in Slack's case, commenced at the Central Criminal Court before the late Mr. Justice Williams, on the 16th April, 1844, and was continued on the two following days, on the last of which days it was concluded. Barber was sentenced to transportation for life, and was sent out pursuant to his sentence. On the 12th Nov. 1846, her Majesty was graciously pleased, in consequence of some circumstances humbly represented to her, to grant her pardon unto Barber, on condition of his not returning to the United Kingdom; and on the 3rd Nov. 1848, her Majesty was further graciously pleased to grant him her free pardon, which was forwarded to Mr. Stevenson, who acted as Barber's attorney, from the office of the Secretary of State for the Home Depart-

ment, accompanied by the following letter, addressed to Mr. Stevenson by Mr. Cornewall Lewis, one of the Under-Secretaries of State for that department.

"*Whitehall, 10th Nov. 1848.*

"*Sir,*—I am directed by Secretary Sir George Grey, to acknowledge the receipt of the several documents which you have transmitted to him on behalf of Mr. W. H. Barber, who was convicted at the Central Criminal Court in April, 1844, of being accessory before the fact to forgery, &c., sentenced to be transported for life.

"Sir George Grey desires me to inform you that these papers have received his full and anxious consideration, and that he has satisfied himself that there is sufficient ground to justify his advising her Majesty to grant Mr. Barber a free pardon, which is herewith inclosed.

"But while he has arrived at this conclusion, from a consideration of all the documents in his possession, comprising very material circumstances which have transpired since the conviction, Sir George Grey feels bound to add, that he sees no reason to doubt that the verdict of the jury was warranted by the facts proved at his trial; and although he now believes Mr. Barber to have been free from any guilty participation in the frauds of which he was made the instrument, he thinks that greater prudence and caution on his part would have exempted him from the suspicion to which his conduct in the transactions in question naturally exposed him.

"(Signed) G. CORNEWALL LEWIS.

"*A. Stevenson, Esq., 19, Essex-st., Strand.*

"It appears from Mr. Barber's own admission that he was convicted of uttering the will of A. Slack, knowing it to be forged, and not of being an accessory before the fact, as supposed by Mr. Lewis.

"The documents referred to in Mr. Lewis's letter comprised certificates from persons in the first station and consideration at Norfolk Island, Van Dieman's Land, Sydney, and Madras, (to which latter place Barber went on his way back to Europe,) certifying their belief of his innocence, and confessions, and declarations of Fletcher, that Barber had no guilty knowledge of any of the fraudulent transactions in which he, Fletcher, had been engaged, and a confession and declaration of William Saunders to the same effect, so far as regards the transactions in which he and his wife were implicated. Also lists of subscriptions made at Sydney and Madras, to enable Barber to return to Europe. Copies of the documents can be produced if it be the pleasure of the Court to refer to them.

"From the evidence given at the trial, it appears that in 1829, there were standing in the books at the bank of England, in the name of 'Anne Slack, of Smith Street, Chelsea, spinster,' £6,629 17s. reduced 3 per cent. annuities, and £3,500 consols: both sums were purchased on the 23rd October, 1829, and the dividends on them were paid under the powers of attorney to one Mr. Ardenne Hulme, who received

them on account of Miss Slack; the dividends on the consols (in respect of which fund the felony was committed) were received by him up to the 6th January, 1832. Mr. Hulme died in July, 1832, and no dividends having been received on the £3,500 consols after January, 1832, that stock was on the 6th July, 1842, transferred to the commissioners for the reduction of the national debt. Miss Slack seems to have been ignorant, or to have forgotten, that she was entitled to any such property. Somewhere about the autumn of 1842, Christmas, the Bank clerk, gave information to Fletcher touching the stock in question, and in September, 1842, Fletcher and another person supposed to be William Saunders, went down to King's Langley, Herts., to make inquiry about the Slack family, and was told there was a Miss Slack residing in the neighbourhood with Captain Foskett. After this it is clear that some intercourse on the subject took place between Fletcher and Barber, because, on the 4th October, 1842, Barber addressed the following letter in the name of his then firm, Barber and Bircham, to Captain Foskett.

"SIR,—We have occasion to ascertain who is the legal personal representative of Ann Slack, formerly of Chelsea, spinster. As we are informed you intermarried with some member of that lady's family, we should feel obliged if you can inform us who are her executors, administrators, or other legal representatives.

"(Signed) BARBER AND BIRCHAM."
"To this letter Captain Foskett, on the 13th October, 1842, returned the following answer from Brighton.

"GENTLEMEN,—In reply to your letter of the 4th instant, addressed to me at Abbot's Langley, I beg to inform you that Miss Anne Slack is my wife's sister, and resident with us; her eldest brother is also here. Any further communication will reach her addressed as above, for the present and next week.

"(Signed) JOSEPH FOSKETT."
"On the 25th October, 1842, Barber in the name of his firm, again wrote to Captain Foskett as follows,—

"SIR,—We are obliged by your letter of the 13th instant, but as we find an entry of the death of Anne Slack, (formerly of Chelsea,) at Somerset House, by which it appears she died at Bath, we feel some doubt as to the identity of the lady in question. If, therefore, it would not be giving you too much trouble, we should feel exceedingly obliged by your acquainting us whether Mrs. Foskett's sister formerly resided at Chelsea, and whether she spelt her Christian name with or without an e. We noticed in your letter you spelt her name ANN.

"(Signed) BARBER AND BIRCHAM."
"Captain Foskett wrote to Messrs. Barber and Bircham from Brighton, on the 27th October, 1842, in answer to their last letter, as follows,—

"GENTLEMEN,—Having extended our stay at Brighton, your letter of the 25th instant has been forwarded to me, in reply to which, I beg to inform you Miss Anne Slack does spell

her Christian name with an e, and resided in Smith Street, Chelsea, with a family of the name of Leak, about 12 years since, and has constantly resided since that period with her sister and myself. As you have not communicated the object of your inquiry, it is not in my power to assist you further at present. We shall feel obliged by information on that head, and should it relate to bequests of the late Mrs. Bevan, deceased, shall be glad to hear, or upon any other matter.

"(Signed,) J. FOSKETT."
"P.S. We shall leave Brighton on Wednesday next for Abbott's Langley."

"On the 29th October, 1842, Messrs. Barber and Bircham again wrote to Captain Foskett, as follows, the signature of the name to the letter being in the hand-writing of Barber.

"SIR,—We are much obliged by your letter of the 27th instant, and beg to know if it is probable that you will be in town shortly, as we should be extremely glad if you could favour us with a call, when the object of our inquiries shall be explained.

"(Signed,) BARBER AND BIRCHAM."

"In consequence of this last letter Captain Foskett called at Barber and Bircham's Office in the first week in November, accompanied by Mrs. Foskett and Miss Slack, whom he left in a cab at the door outside, while he went in and saw Barber; and he again, on a second occasion called on Barber, in company with his solicitor, Mr. Baxter. A good deal of conversation took place on the occasion of these visits. From the conversations Barber seems to have treated the property as belonging to a lady who had lately died, and to have looked upon Miss Slack as entitled through that lady. Inquiries were made by him respecting Miss Slack's property, and whether she managed it herself, and what was her age. He was informed that part of her affairs were managed by a trustee, but that the rest was in her own hands. Captain Foskett told him that he did not exactly know Miss Slack's age, and admits he may have said she was about 27, upon which circumstance Barber lays great stress, but Captain Foskett in his evidence states that Barber said forty would do, and therefore he took no great trouble to remember, and at the same time said he did not exactly know her age. At the first interview Barber became cognizant of the fact, that Mr. Hulme always managed Miss Slack's affairs till his death, and requested that Captain Foskett would not pursue an inquiry respecting the property in question through any other channel. At these interviews he was also told by Captain Foskett, that he could not recommend Miss Slack to incur any expense until he, Barber, could show there was some reason to think she was entitled to something, but Barber made no communication as to what the property was, nor would he, (although asked to do so,) state who was his employer, saying he had enjoined him to give no particulars, and so names, but intimating that he had access to information at the Bank not generally attainable. Between

the two interviews, and on the 28th November, 1842, Barber wrote the following letter to Captain Foskett in the name of the firm.

"SIR,—It would probably facilitate our inquiries if you could oblige us with the names of the trustees, holding funded property for the benefit of Miss Anne Slack. Requesting the favour of your early attention."

"(Signed) BARBER AND BIRCHAM."

"Captain Foskett returned no answer to this letter, and in the 12th December, 1842, Barber again wrote to him in the name of his firm as follows:—

"Re Slack.—DEAR SIR,—In reference to our last letter, some explanation of the object of the inquiry which it contained may be necessary. It appears that the lady entitled to the property in question was possessed of a small portion of stock in the public funds, and it would materially assist us in ascertaining the identity, if you could acquaint us with the names of her trustees. If you could at the same time favour us with her signature, we think it would enable us at once to determine whether it is really her property or that of another party. If you are likely to be in town in a few days, we should feel obliged by the favour of a call. We are desirous for the sake of all parties of clearing up the point with the least possible delay."

"(Signed) BARBER AND BIRCHAM."

"In answer to this letter Captain Foskett wrote to Messrs. Barber and Bircham, on the 13th December, 1842, as follows:—

"GENTLEMEN,—I have deferred replying to your last inquiry with the intention of calling shortly, and purpose being in town on Friday next, or Saturday, when I will do so about 11 or 12 o'clock. You will, no doubt, remember that I stated I could not recommend Miss Slack to make herself a party to inquiry that would incur any expense, until she should see some little ground for supposing it probable she may prove to be the person legally entitled to the property bequeathed, when she would be willing to enter into some arrangement; as you have not favoured her with any further explanation, we regret the reserve you think necessary, as an obstacle to our throwing further light upon the subject, which a very little communication might enable us to do."

"(Signed) J. FOSKETT."

"In consequence of a suggestion from Barber, Miss Slack's hand-writing was sent to him, in the shape of a letter from her to Mr. Baxter, which letter was returned by Barber to Mr. Baxter on the 4th January, 1843, in the following letter written by Barber in the name of his firm.

"DEAR SIR,—We beg to return Miss Slack's letter, and to state that we find the signatures do not correspond, and consequently we have arrived at the conclusion, that the identity cannot be supported. We trust you will be good enough to consider the negotiation confidential, and should our exertions to discover the right party prove successful, we shall not fail to communicate to you the result."

for the satisfaction of the young lady and her friends.

"(Signed) BARBER AND BIRCHAM."

"In March, 1843, an advertisement was inserted by Fletcher, in the Times, relating to Miss Anne Slack, with references to Messrs. Barber and Bircham, which was sent by Mr. Offley, a solicitor, in London, who in consequence of seeing it wrote to Messrs. Barber and Bircham on the 8th March, 1843, as follows:—

"GENTLEMEN,—I saw an advertisement in the Times this morning, inserted by your firm, for the discovery of the representatives of Miss Ann Slack, formerly of Chelsea, spinster. I know a lady of that name, residing with her brother-in-law, Captain Foskett, at Rose Cottage, Abbots Langley, Herts, who resided some years in Chelsea, and who had an uncle, named John Slack, who lived in Sloane Street, Chelsea."

"(Signed) GEORGE OFFLEY."

"About the 9th March, 1843, Mrs. Dorey took lodgings at the house of Mr. Merrile, a tailor, No. 7, Francis Street, Tottenham Court Road, representing that she took them for a lady who was coming out of the country about law business, and on the same day, Mrs. Saunders, calling herself Miss Slack, and known there by that name only, went into the lodgings. Mrs. Saunders remained in the lodgings until the 7th April, and then Mrs. Dorey called for her, and they both went away."

"On the 16th March, 1843, Barber went to Mr. Wills, a proctor in Doctors' Commons, accompanied by the pretended Miss Slack; one or the other gave instructions to Mr. Wills for the probate of a will which will purported to be the will of Ann Slack, spinster, formerly of Smith Street, Chelsea, but then of South Terrace, Piccadilly, and to be dated 3rd June, 1842, whereby she bequeathed unto her beloved niece, Emma Slack, the sum of £3,500, stock, in the three per cent. consolidated annuities, then standing in her name in the books of the Bank of England, and also all her monies and securities, for money of what nature or kind soever, and whosoever the same should be at the time of her death, and whereby she appointed her niece sole executor of her will. Probate was obtained; Barber gave a check for £50, the probate duty; the effects were sworn under £5,000. Mr. Wills trusted entirely to Barber as to the identity of Emma Slack. He had done business for Barber and Bircham before, although he did none afterwards; he had always regarded Barber as an upright and honourable man, and considered it as one of the most ordinary transactions that could take place. He sent the probate to Barber and Bircham."

"On the 27th March, 1843, the probate was left at the Will Office of the Bank of England. It does not appear who left it, but on the following day, or within a day or two, a letter was left at the Bank, applying for a transfer of the stock to the pretended Emma Slack; the figures and words in it, 17th February, 1841

ing in Barber's hand-writing. The letter was as follows :

"To the Governor of the Bank of England.—Sir, there was lately standing in the name of Anne Slack, of Chelsea, spinster, the sum of £3,500 in the three per cent. consolidated Bank annuities; from the period which has elapsed since any dividends have been received, it is possible that the amount may have been carried to the Commissioners for the reduction of the national debt. My aunt died on the 17th day of February last, leaving me her sole legatee and executrix. I have since proved the will, the probate whereof has been duly lodged in the Will Office of the Bank, and I shall therefore be glad to have the stock in question transferred into my name. Dated this 24th day of March, 1843.

"EMMA SLACK, sole legatee and executrix of the deceased, Anne Slack, No. 7, Francis Street, Tottenham Court Road."

"The stock was transferred accordingly, and on the 7th April, 1843, Barber accompanied the pretended Emma Slack to the Bank of England, to receive the arrears of dividends upon it; he was told by the clerk at the Bank that he must be identified; he went and fetched a stock-broker for the purpose, and when he came the clerk required the following document to be signed, 'Paid, 7th April, 1843, Emma Slack, spinster, executrix of Ann Slack, spinster, deceased, known to me,' and under those words the broker signed his name, which he did upon Barber's authority, the broker knowing him; the clerk then gave Barber a memorandum, which enabled the pretended Emma Slack to receive the amount of the dividend, being £1,151 18s. 10d. This sum was afterwards, on the same day, paid at the proper office in the Bank, partly in gold and partly in notes, according to a direction written by Barber on the back of the before-mentioned memorandum. The money appears to have been paid into the hands of the pretended Emma Slack, Barber being with her, and supplying the bag for the gold. £400 was paid in four notes of £100 each; £100 more in a note of £100, and £600 in gold. It does not appear clearly how the residue was paid, but it appears to have been paid part in notes and part in cash.

"On the same 7th April, 1843, the same broker sold the £3,500 consols under instructions from Barber, the pretended Emma Slack being with him at the time, and being introduced by Barber to the broker as Emma Slack. It was sold for £3,386 5s. which amount was paid by the purchaser to the broker, who paid the same over to Barber, deducting his commission.

"The fraud which was committed in this case was discovered from the circumstance that the Bank of England marked Miss Slack as dead in their books, not only in respect of £3,500 consols, but also in respect of the £6,379 17s. reduced annuities, standing in her name; and upon the discovery being made, Mr. Freshfield, the solicitor of the Bank of Eng-

land, went to Mr. Barber on the subject, and having alluded to what had occurred, Barber said that Miss Slack came to him with the will, which was quite regular, that the property was mentioned in the will; that she stated that her aunt had died about six weeks before; that he had got the will proved and got her the money, which was all that he knew of the business; that she was a most respectable woman, and he had no doubt the transaction was all right; and being asked if she was introduced, and by whom, he said he had no doubt she was, but he did not recollect by whom, that he would endeavour to recall the fact; but to him it was a mere matter of business, and he knew nothing more of it; he was told that was quite inconsistent with the fact, that he had been in communication with Captain Foskett some months before the alleged death of Miss Slack respecting this very property; he at first evaded this, but said it might be so, but that it was a mere matter of business, and he did not feel authorised in disclosing the affairs of his clients; he was told that a fraud and a forgery had been committed, and that he was gravely implicated: he did not, however, disclose the name of the person who introduced the pretended Emma Slack to him, but he produced the probate and his books, and from the books it appeared he had only received £15 for the law charges on the transaction.

"I have now, I believe, set out with correctness in substance, the evidence in this case so far as it affects Barber, having stated the general evidence only to an extent sufficient to make intelligible the particular evidence affecting him.

Barber's own account of the transaction, as taken from his memorial to the Secretary of State, set forth in a book published by him, under the title of the Case of Mr. W. H. Barber, is as follows.

"In the autumn of 1842, I first received Fletcher's instructions in this matter. He said there was a sum of £3,500 stock, in the name of Ann Slack, of Smith Street, Chelsea; that he had ascertained there was a lady of the same name living with Captain Foskett, of Abbots Langley, and he requested me to communicate with the captain, to ascertain, *whether she was the party, and if so, if she was aware of her rights, but on no account to disclose the nature of the property without his express authority*; hence the correspondence of myself and partner with that gentleman, and my subsequent interviews with him and his solicitor. In the course of this negotiation I learned that the lady had once lodged in Smith Street, Chelsea, a circumstance which raised a strong presumption of her identity; but unfortunately for me, the statement as to the residence was accompanied with another, which raised a much stronger presumption that she was not the party, namely, her age; the captain, either from some delicacy (or a most unprofitable and calamitous one) about the age of an unmarried lady, or some other motive, represented her as

only 27 years old, whilst in truth she was *six or seven and thirty*. I made some other inquiries of the captain, but without eliciting any fact which raised the least presumption of his sister-in-law's identity beyond her temporary lodging in Smith-street.

"The particulars thus collected, I fully reported to Fletcher, especially the two facts as to the residence and age; he said, 'It is hardly possible she can be the party, as the owner of the stock had executed a power of attorney 12 years before, which Miss Slack of Abbots Langley could not then have legally done, she being then a minor;' but, continued he, 'if you can obtain her hand-writing, I will have it compared with the signature at the Bank, which will effectually determine the question.' I accordingly applied by letter to Captain Foskett for it, and his Solicitor subsequently brought me a letter written by the lady. This I enclosed in a letter to Fletcher, and it was in this important stage of the inquiry where he grossly deceived me. In a few days he brought the letter back, stating, '*It is now quite clear that this lady is not the party entitled, as the owner of the stock writes a large stiff hand like an elderly person, whilst this lady writes the usual fine running-hand of a young lady;*' he added, 'that Miss Slack, of Abbots Langley, held a sum of £6,000 stock, but that the signature to that, and the £3,500 were totally dissimilar; in fact, that the writing of this young lady was as unlike the writing of the owner of the unclaimed stock, as ordinary writing was unlike print.' At the same time he made this report he handed me what he said was an extract from the letter of his friend at the Bank, but without leaving me the letter itself which confirmed his report; I therefore concluded, without doubt, that although it was certainly a remarkable coincidence, that two ladies of the same name, and both holders of funded property, should have resided in the same street, yet that the statement of Captain Foskett as to the *age*, and the report of Fletcher upon the *writing*, united in satisfactorily proving that the sister-in-law of the former had no connection whatever with the unclaimed fund. I accordingly wrote to Captain Foskett's solicitor to that effect, returning his client's letter. I remarked to Fletcher on the singular coincidence of two separate holders of stock of one name, who had resided in the same street, he said, 'It is not so very extraordinary as Smith-street is one in which many persons live for a season only, and then remove, and Slack is by no means so uncommon a name as you suppose, there being a great many in the Bank books.' I most implicitly believed his report, not only from pre-established confidence in himself, but because I was in some measure prepared for a result unfavourable to the lady's identity from her brother-in-law's statement as to her age. Moreover, I believed that Fletcher was, as he affected to be, chagrined and disappointed, that after so much trouble he had failed to discover the true owner.

"My partner and I talked over this business

as of the other matters in the office, and particularly the result of this inquiry; and we both thought that the presumption which had been raised in Miss Slack's favour by the fact of former residence merely was completely rebutted by the apparently conclusive facts as to age and writing. All ideas, therefore, of this lady being entitled was wholly dismissed from both our minds.

"Fletcher expressed himself exceedingly disappointed, but said he should resume his enquiries for the right party; a few days afterwards he wrote us a letter expressing his intention of going to *Bath*, as he had reason to suppose, from the death of a lady of the name there, that the owner might be heard of in that quarter.

"After his return, he called in my absence at our office, and left a copy of the *Bath and Cheltenham Gazette*, in which he had inserted an advertisement for the representative of 'Anne Slack, formerly of Smith Street, Chelsea,' and referring parties to Barber and Bircham. In answer to this advertisement, we received a letter from a Jane Slack of Bath, stating that she was the niece of Anne Slack, and pretending to have a claim. This we answered. Shortly afterwards, we received a further letter, in which the writer stated that she was satisfied she could not be the party inquired after. Upon a careful consideration of this correspondence after my apprehension, a suspicion arose in my mind that it was fictitious, and my solicitor accordingly went to Bath and inquired for the writer, when he discovered that she was no other than the identical Emma Slack, and that she had taken lodgings merely to have our answers to her letters received there. The villainous subtlety of Fletcher thus became evident. Instead of Bath being the object of his journey, it was *Bristol*, the residence of Sanders and his wife, where the remainder of the plot and the details by which my eyes were to be blinded were doubtless arranged. If, sir, you will take the trouble to refer to the *Times* of the 23rd April last, containing my address to the Court, or to my memorial addressed to you from Millbank, it will be seen that the letters of this pretended Jane Slack were regularly sent to Fletcher, and that at the same time he affected to me to have no knowledge of her whatever. One of the numerous and extraordinary and unfortunate circumstances to which I became the victim was the illness of my solicitor at the time of my trial, whereby I not only lost his important services, but his evidence of the result of his inquiries at Bath. From Saunders's information since the trial, it appears that he had by agreement with Fletcher registered the death of one Anne Slack, at Bath, sometime before the taking of the lodgings there, but when a certificate was applied for there appeared to have been an error in the entry, and that Fletcher and he then determined to register her death at Fimlico, which accounts for Jane Slack's somewhat abruptly breaking off her correspondence with our firm. From the

middle of January, when the communications with Captain Fookett terminated, to the early part of March, Fletcher pretended to be exerting himself to trace out the true owner of the stock. It was then I suggested that an advertisement in the *Times* might produce the party; he assented to this, and one of our clerks prepared such an advertisement and got it inserted. Several persons applied in consequence, but Miss Slack's (of Abbots Langley) friends took no notice of it: a letter was, however, sent us by a Mr. Odley, intimating that there was a lady at Abbots Langley of that name. Mr. Bircham wrote in reply that we had ascertained she was not entitled. A few days afterwards, i. e., on the 15th, Fletcher called and said, that after failing in all his previous exertions, he had at last met with the real owner by the merest accident. He said, that whilst superintending some repairs of a house he had recently purchased at Westminster, (the conveyance of which we had just prepared,) he got into conversation with one of the workmen, and finding that he was a Chelsea man, he inquired if he knew anybody of the name of Slack there; that the man then referred him to a house at Chelsea; that, upon inquiry there, he was referred to No. 7, Francis Street, Tottenham Court Road, where he found a highly respectable woman, who was the niece of the owner of the stock; he said he was quite satisfied of the identity of her aunt, as he had procured a *fac simile* of the signature to the will, and had it compared with the Bank books, and they tallied exactly. I congratulated him upon the lucky incident which had led him to the owner, but he said, with a shrug of well-feigned disappointment,—"Yes, but I shall gain nothing by it, as she does not require any information." I said, "She may not be aware of her right to this particular stock." He said, "O yes, she does, as it is expressly named in the will." "But," said he, "she does not appear to be particularly connected with a solicitor, and I will recommend to her your firm." I thanked him, and the next morning he introduced her as 'Miss Slack'; she was dressed in black, and was very respectable in appearance; she produced the will, and I particularly noticed that the signature exactly corresponded with the description Fletcher had originally given me of that in the Bank books, being like an old lady's, and the very opposite of Miss Slack of Abbots Langley. At the same time she produced an official copy of the registration of her aunt's death at Fimlico, by which it appeared she had died in the previous February, of gout in the stomach, aged 68. I made some inquiries about the deceased, to which this such imposter answered with great readiness. She said she should have proved the will before, but she had been ill, which statement seemed quite borne out by her delicate appearance; she was studiously disguised, wearing light-rings, (her natural hair being black), and complained of gout in her hands and feet, so that she could only walk with difficulty. From the precision of dress and stiffness of

her air and manner, she had all the appearance of being, as she represented herself, an unmarried lady, and was about five and thirty years of age. She professed to treat my services as somewhat superfluous, observing that it was rather a proctor's business. I said it certainly was, and that the aid of an attorney was not absolutely necessary. Fletcher then remarked, that as the dividends of the 3,500*l.* had been transferred to the Commissioners for the reduction of the national debt, he would recommend her to avail herself of my professional assistance. She asked what our charges would probably amount to; I answered about 10*l.* She said, if they were not likely to exceed that, she would be glad if I would attend to the matter for her, as she was not accustomed to business. I told her that she would have to advance the probate duty, which would amount to 80*l.* She said she was not immediately prepared with this, but had no doubt she could borrow it. Fletcher then said, that as the business would now be in my hands, and I was his solicitor, he would advance it, if she would authorize me to retain the money for him; to this she assented, and he gave me a check for the money. I then accompanied her to Doctors' Commons, where she proved the will in the usual way; it was attentively perused by the proctors, who administered the customary oath without making any remark upon it. I remember saying to Fletcher he might as well accompany us to Doctors' Commons, but he said, that as his presence was not required, he must attend to some business of his own. After the will had been proved, the sham executrix took a cab, directing the driver to conduct her to No. 7, Francis Street. Upon receipt of the probate from our proctor, Mr. Bircham prepared the application to the Bank for the stock. This being signed by the pretended executrix, he lodged it with the probate at the Bank, and after several inquiries, sometimes made by himself and at others by a clerk, he heard that the stock had been transferred into the name of the executrix. He accordingly apprised her of this by letter, as well as Fletcher. Whilst this part of the business was in progress, I was much engrossed by the business of the Spring Assizes, and was absent on the Home Circuit about ten days, during which Bircham superintended the business. On my return, I found that Fletcher and the pretended Miss Slack had severally called at the office complaining of delay. Accordingly, upon learning from Bircham that the matter was ready for settlement, I directed a clerk to make an appointment for Miss Slack to attend and settle, and for Mr. Fletcher to attend and receive his 60*l.* She came on the 7th of April, when I accompanied her to the Bank. After passing through the usual routine and her signing all the necessary books, she received the stock and dividends amounting to about 4,600*l.* In the course of this, a circumstance occurred which, I think you will allow, was most unfairly pressed against me at the trial to prejudice the jury, namely, that 600*l.* of the

fund was obtained in gold, and that it was delivered to me. The simple fact was, that being with the executrix, and she having, or professing to have, the gout in her hands, I carried this weight of gold for her till she got to a cab. Fletcher met us in the Rotunda of the Bank, and afterwards attended at our office to receive his 80*l*. When this was done, she paid him 5*l*. for the use of it and his trouble, which he received with a well-feigned appearance of dissatisfaction. Our law bill was 13*l*., for which she handed me 15*l*.. All the money—the 4,600*l*.—was counted over, and she signed the usual receipt for the whole amount in a cash account entered into the office ledger. In signing her assumed name, 'Emma Slack,' she appeared to have great difficulty in writing, but which it has since occurred to me was probably affected lest I should recognize the writing of the *Jane Slack* of Bath. This being settled, and Fletcher having offered to accompany her to a cab, they left our office, the executrix having the funds in a bag. From that moment I never saw or heard of her until some time after my apprehension, when I was told she was a Mrs. Saunders, a name that was never breathed by Fletcher or herself during the whole of the business."

"The Court has now before it the case made out against Mr. Barber, and his own statement upon the subject. There can be no doubt that Barber's conduct in the transaction exposed him to strong suspicion of being a party implicated in the fraud, and that Sir George Grey arrived at the conclusion that he had no guilty knowledge of the fraud and forgery committed, from the circumstances that Fletcher and William Saunders both made declarations and confessions to that effect, as already stated in my report. But setting aside the question of his guilt or his innocence, it will be for the Court to say whether Mr. Barber, as an attorney, acted rightly and properly, or otherwise, in withholding from Captain Foskett and from Miss Slack the nature and amount of the property respecting which he corresponded with Captain Foskett, and the name of the client who employed him, knowing, as he clearly did know, that his client upon this and upon other occasions obtained information from a source to which other parties had not access, and which he could hardly fail to know was improperly obtained. It is observable, too, that Barber's letter of 12th December, 1842, was so framed as to lead Captain Foskett to suppose that the property, on the subject of which Barber was corresponding with him, was a different sort of property from that which he (Barber) knew it to be. Barber lays great stress upon Captain Foskett's wrong statement of Miss Slack's age, and a difference discovered in her hand-writing in her letter and in the hand-writing at the books at the Bank; but upon the first point it is observable that he exercised no care. He might have asked for a baptismal register, or he might have requested Captain Foskett to obtain from Miss Slack her precise age, or he might have written to Miss

Slack herself for the information; but he did nothing of the sort, although he knew perfectly well that the stock was standing in the name of Anne Slack, of Smith Street, Chelsea, spinster, and that Miss Slack came fully under that description; and with this knowledge on his part, I cannot but think it extraordinary that he as a man of business could give unsuspecting credit to Fletcher's account of the mode in which he had found out the person whom, according to Barber's statement, he represented to him as the party really entitled to the stock.

"*Burchard's Case.*—This case occurred in 1841. Fletcher, Barber, and Georgiana Dorey were the parties accused. The case was not tried, but the facts in relation to it, which I have taken partly from Barber's own statement in his affidavit, sworn 15th May, 1849, and partly from the depositions before the Lord Mayor, were in substance as follows:—It appears that in January, 1834, several sums of 700*l*. 3*l* per cent. reduced annuities, and 300*l*. 3 per cent consols, were standing in the name of Eliza Burchard, of Cooper Street, Westminster, spinster; and that the same sums were, at or about that time transferred to the Commissioners for the reduction of the national debt, no dividends having been received thereon for 10 years. In June, 1841, Fletcher introduced to Barber, at his office, Georgiana Dorey, under the pretended name of Eliza Burchard, who represented herself to be the niece of Eliza Burchard, deceased, and produced an original will, purporting to bear date the 14th day of October, 1825, and to be the will of the said Eliza Burchard, deceased, and therein described as Eliza Burchard, spinster, formerly of Cooper Street, Westminster, in the county of Middlesex, and late of Rostock, Mecklenberg, in Germany, but then of New Bond Street, Bath, in the county of Somerset, whereby she gave and bequeathed unto her niece Eliza Burchard, who was then living with her, the sum of 700*l*. stock in the 3*l* per cent reduced annuities, also 300*l*. stock in the consolidated 3 per cent annuities, both standing in her name in the books of the Governor and Company of the Bank of England in London. She also gave and devised unto her aforesaid niece all her money, securities for money, goods, chattels, estate and effects of what nature or kind soever, and wheresoever the same should be situate at the time of her death; and she appointed her said niece sole executrix of her said will. Barber was desired to take the necessary steps for proving the will. He accordingly accompanied the pretended executrix to his proctor in Doctors' Commons, and procured the will to be proved, and upon receiving the probate he caused it to be lodged at the Will Office at the Bank of England. He also prepared an application to the Bank for transfer of the funds, and procured the signature of the pretended niece to it, and this was also lodged at the Bank; and the two sums of stock were transferred accordingly. There is no doubt that the will was a forgery, and that no such person as Eliza Burchard lived in

New Bond Street, Bath. On the 22nd June, 1841, Barber accompanied the pretended niece to the Bank, where an order for payment of 446*l.* 5*s.* for arrears of dividends on the 700*l.* 3*l.* per cents. was paid to him, or to her in his presence. This money was paid as follows.—346*l.* in gold and silver, and 100*l.* in notes; and, from the evidence, I think it must be taken for granted that Barber was present when the money was so paid. On the same 22nd June, 1841, Barber gave instructions to Mr. Hill, his broker, to sell the 700*l.* 3*l.* per cents., which was sold accordingly, and the produce, 686*l.*, was paid to Barber by a cheque crossed, ——— & Co., which cheque he paid to his own account with his own bankers, and he appears to have given to his client a cheque on his bankers for the same amount.

"It appears further, that on the 20th July, 1841, Barber accompanied the pretended niece to the Bank to receive the arrears of dividends on the 300*l.* consols, upon which occasion an order was procured for the amount of such arrears, being 162*l.*, but I cannot collect from the evidence or from Barber's affidavit, what was done with the order, neither can I collect from either of these sources who sold the 300*l.* consols, or how the produce was applied; although Barber represents that about a month after the first sale, (on the occasion of which first sale he states that the pretended niece told him that having no suitable investment for the other stock, she should allow it to remain unsold,) he, at the request of the pretended niece, met her at the Bank and assisted her in the sale thereof.

"In this case, also, no legacy duty was paid to the government, but the evidence does not show that any sum was paid to or retained by Barber out of which to pay the same.

"*Hunt's Case.*—This case occurred in 1842. Fletcher, Barber, Georgiana Dorey, and William Sanders, were the parties accused. William Sanders pleaded guilty, as already mentioned, upon the bill of indictment found against the above parties, but the other parties, having been already convicted in Slack's case, were not tried upon this indictment. In this case the evidence consists of the depositions made before the Lord Mayor, and Barber's affidavit sworn 15th May, 1849, and a bill of costs of Messrs. Barber and Bircham, containing the charges made by them for the business done in relation to the matter in question. The depositions before the Lord Mayor are not so full as in Burchard's case; but judging as well as I can from the evidence before me, the facts appear to be, that Mary Hunt, formerly of the city of Bristol, widow, having made her will, whereby she appointed certain persons therein named to be executors thereof, died in 1806, and the executors proved her will on the 19th November in that year. She had standing in her name in the books of the Bank of England, 1,200*l.* 3 per cent. consols. The executors had no knowledge that she was entitled to this property, and consequently never dealt with it. No dividends having been received upon these

consols for the space of 10 years, the amount at the expiration of that period was carried over to the account of the Commissioners for the redemption of the national debt. Somewhere about May, 1842, William Saunders, introduced by Fletcher, went to Barber's office under the name of Thomas Hunt, and produced to Barber a will purporting to be the will of Mary Hunt, widow, formerly of Bristol, afterwards of Bath, but then of Spring Street, London, and to bear date the 10th Dec., 1829, whereby, after reciting that she was possessed of about twelve hundred and ten pounds in the 3 per cent consolidated annuities in the Bank of England, she gave and bequeathed it unto her beloved grandson, Thomas Hunt, mariner. Also, all her monies, securities for money, goods, chattels, estate and effects of every kind, wheresoever the same should be found at the time of her death. And she also made and appointed her grandson, Thomas Hunt, sole executor of her said will. Barber accompanied the pretended Thomas Hunt to Messrs. Iggluden and Co., proctors in Doctors' Commons, and through them procured the will to be proved. The probate duty was paid by Barber. An application for transfer of the stock was made in the same way as in the other cases, and the stock was transferred to the pretended legatee, and the arrears of dividends, 435*l.* 12*s.*, paid to him. The will was a forged will. Barber states in his affidavit, that when he went to the proctor's he handed the will to Mr. Thatcher, the managing clerk of Iggluden & Co., to whom he mentioned that the property left by the will consisted of stock and dividends, and that the latter had been un-received for many years, upon which Thatcher remarked, that as it was unclaimed stock, there would be great difficulty in getting it from the Bank of England. That Thatcher inquired why the will had not been proved before, (the deceased having died in 1829,) when it was explained by the pretended Thomas Hunt, that he had been at sea, and only lately returned, and found his grandmother's will; in consequence of which remark, Barber says he suggested to the pretended Thomas Hunt that it might be desirable that some declaration should be made to satisfy the Bank of his identity, and that a day or two afterwards he produced to him (Barber), at his office, a person calling herself Mary Howard, who made and signed a declaration for the purpose. He sets out the declaration in his affidavit, and states that his partner (Bircham) accompanied Mary Howard to a notary, before whom the declaration was made. He does not state who prepared the declaration, but from his affidavit I think it must be taken that he did so himself, although the charge for preparing and getting it made is, he says, in the diary of his partner. It appears further from his affidavit, that certain charges for obtaining a certificate of the birth of the pretended Thomas Hunt, and of a declaration identifying him as the party named in the certificate, and getting it declared before a notary, and for an attendance at the Bank to

ascertain when the stock could be obtained, are also taken from the diary of Bircham. The bill of costs also contains charges for making an appointment with the pretended legatees for settling and for attending settlement, which I conclude to mean an attendance on the party to be at the Bank and an attendance on him there on the stock being transferred and the arrears of dividends paid. Barber does not state that this part of the business is found in Bircham's diary. He attended the parties in the other instances, and I think it is but a reasonable presumption that he did so here. It appears in this case, too, that the legacy duty payable to government was never paid. The following charges respecting it are to be found in the bill of Messrs. Barber and Bircham:—

	£.	s.	d.
Instructions for residue account	0	6	8
Preparing same and fair copy	1	11	6
Attending at Solicitor's House, paying same	0	13	4
Paid duty	15	0	0

"The total bill of charges, including the above items, and 40*l.* for probate duty, and 10*l.* 11*s.* 9*d.* for the proctor's charges, amounted to 81*l.* 4*s.* 7*d.*, and I have no doubt that this sum of 81*l.* 4*s.* 7*d.* was received from the pretended legatees, and my impression is, that it was received by Barber. He says on this subject, in his affidavit, 'that the copy of the bill of costs entered in the bill-book of this deponent and his said partner is in the handwriting of a clerk named John William Fosbery, a son of Lieutenant Fosbery, late of the royal navy, and now an inspector of the city police. That, in order to ascertain by whose directions such bill was completed, this deponent has seen Lieutenant Fosbery, and made inquiries for his said son, by whom he has been informed, that about six months ago he emigrated with his brother to South Australia. That this deponent has no recollection whatever about the making out the rough draft of the said bill, and thinks it probable that the latter items as to the legacy duty were inserted prospectively by the said clerk, without any instructions, and this deponent has no recollection of having received such legacy duty, and does not believe that he did so.'

"I cannot rely upon this statement on the part of Barber. It was his duty, as an attorney, to give a bill of charges to his client. A bill was made out in fact, and has been produced before me fairly written out in the books of the firm. Barber does not deny that the bill of charges was paid, and it is impossible to doubt that it was paid; neither can I doubt that the bill was delivered to the client; and I should arrive at a belief contrary to the evidence if I could suppose such bill to have been delivered with an ignorance of its contents on the part of Barber. I might just as well suppose him not to know that the bill contained a charge for the 40*l.* probate duty and the 10*l.* 11*s.* 9*d.* for the proctor's charges. I have no doubt that the charges as to the legacy duty were inserted prospectively, both in this case

and in Slack's case, but I am satisfied that Barber knew that the charges for preparing the residuary account and the amount of legacy duty formed part of the bill of charges, and I have no doubt that the whole of the bill was received by him; and it is clear that such legacy duty was not, as it ought to have been, paid over to the government.

"The Court will, no doubt, perceive that in Slack's, Burchard's, and Hunt's cases, where the stock and dividends were obtained under forged wills, each of those wills purporting specifically to mention the several sums of stock standing in the names of the several alleged testatrices, and that each will contained a residuary bequest in substance similar, and that by each will the party to whom the stock and residuary estate were bequeathed was appointed sole executor or executrix, and that in all the three cases, and also in Stewart's case, where the stock and dividends were obtained under an administration, the parties pretending to be entitled were entire strangers to Barber, and were introduced to him by Fletcher.

"It is further to be observed, that in Stewart's case, which in point of time was the first of the forgery cases, Barber, as solicitor for the administratrix, applied to Messrs. Pickering & Co., attorneys, of Lincoln's Inn, for payment of money alleged to be due from their client, one Mr. Strode, in whose employment the intestate was at his death as gardener, for wages due from him to the intestate, and those gentlemen gave him distinctly to understand that they did not believe that the intestate had left a sister or any other relation, and that consequently his client had no claims, and they refused to pay the demand on that account.

"I have only further to recall the attention of the Court to the objection raised to a report being made touching the malpractice cases."

We shall give in our next number such parts of the separate Report on the "Mal-practice Cases" as were brought under the discussion of the Court. There were six of these cases. The Master decided that two of them were not established. Another was withdrawn by Sir F. Thesiger.

NOTES OF THE WEEK.

LECTURE ON THE NEW BANKRUPT ACT.

Mr. MACQUEEN, the author of the Practice of the House of Lords, delivered a Lecture in the Refreshment Room, Lincoln's Inn Hall, on Monday evening last, which was attended by Lord Campbell, the Vice-Chancellor of England, several of the Benchers, and a greater number of barristers and students than the room could conveniently accommodate. The subject of the lecture was the Bankrupt Law Consolidation Act of last Session; and the learned lecturer, whilst affording much valu-

able information upon the Law of Bankruptcy generally, contrived within the short space of an hour, to convey a remarkably clear and accurate notion of the more prominent alterations effected by the recent measure, the palpable inconsistencies and absurdities of which were exposed, in a manner so masterly and effective as to have manifestly created a strong impression upon the minds of those who were present. As Mr. Macqueen's lecture will, no doubt, be published, we shall then have an opportunity of submitting to our readers the most striking passages in the lecturer's own language. At present we shall only add, that we have rarely had the good fortune to hear an abler or a more

successful lecture than that delivered by Mr. Macqueen, on this occasion.

HILARY TERM.—MEETING OF PARLIAMENT.

Two notable events, the conclusion of Hilary Term and the opening of the Session of Parliament, have both taken place since our last publication, but so recently before the publication of this number as to preclude us from advert- ing at length to either subject, beyond our general observations at p. 263, ante: here how- ever observing, that the cases decided during the Term are not deficient in importance, and that the Session which has just commenced pro- mises to be one of more than ordinary interest to those connected with the legal profession. The Queen's Speech contains no reference to any alterations in the Law except in Ireland.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Williams v. Hodge. Nov. 26, 1849.

PUTTING IN ANSWER.—GUARDIAN TO DE- FENDANT.—ENLARGING TIME.

Held, reversing an order of the Vice-Chan- cellor Knight Bruce, appointing a guardian for the defendant to put in an answer, when suffering under a dangerous illness, that it is in the option of the plaintiff to enlarge the time in order that the defendant may put in his answer.

THIS was an appeal on behalf of the plaintiff from an order of the Vice-Chancellor Knight Bruce, allowing the defendant, who had been suffering under a paralytic stroke, to have a guardian appointed for the purpose of putting in an answer.

J. Parker and *Renshaw* for the appellant; *Wyram* and *W. M. James* for the respondent.

The Lord Chancellor said, that the plaintiff had the option of allowing the time to be ex- tended for putting in the answer, to see if any improvement in the defendant's health was likely to take place, as he might be deprived of the discovery asked by the bill, and discharged the order of the Court below, with costs.

Lassence v. Tierney. Dec. 6, 7, 10, 1849.

WILL.—CONSTRUCTION.—FAILURE OF LI- MITATIONS.—INTESTACY.

On construction of will, held, that the resi- due of the personal estate was undisposed of, as there was no absolute gift in the first in- stance to the testator's daughter or grand- children, all the latter dying unmarried and intestate.

MATTHEW KANNAN, by his will gave to his daughter, Catherine Read, the residue of his estate and effects, to receive the interest thereof during her life, free from the control of her present or any future husband, and after death it was to be divided amongst her children as therein directed. The children having all died

intestate and unmarried, the next of kin claimed the residue as undisposed of by the testator, and upon the hearing before the Vice-Chan- cellor Wigram, a decree was made to that effect, whereupon this appeal was presented by the representatives of Mrs. Lassence, formerly Mrs. Read.

Roll and *F. S. Williams*, for the appellants, cited *Campbell v. Brownrigg*, 1 Phill. 361; *Mayer v. Townsend*, 3 Beav. 443; *Ring v. Hardwick*, 2 Beav. 352.

The Solicitor-General and *James* for the heirs-at-law; *J. Parker* and *J. Bailey* for other parties.

The Lord Chancellor said, that as there was no absolute gift in the first instance to the tes- tator's daughter or her children, the residue of the personal estate was undisposed of in the failure of the limitations, and dismissed the appeal.

Jan. 23, 24, 25.—*Phillipson v. Gatty*, *Gatty v. Phillipson*—Decree of Vice-Chancellor Wi- gram varied.

—26.—*In re Chesterfield Charities*—Refer- ence for appointment of trustees.

—26.—*Stanger v. Mayhew*—A plea of in- solvency after bill filed was held good.

—26, 29.—*Hawkins v. Jackson*—Cur. ad. vok.

—24, 25, 26, 29.—*Maclure v. Ripley*—Ap- peal allowed from the Vice-Chancellor of Eng- land.

—29.—*Cowell v. Watts*, *Watts v. Cowell*— Part heard.

Masters of the Rolls.

In re Norwich Yarn Company, ex parte Harvey and another. Jan. 14, 1850.

WINDING-UP ACT.—PETITION OF EXECU- TORS OF DECEASED SHAREHOLDERS.

An order was made for the dissolution and winding up of the affairs of a company, under the 11 & 12 Vict. c. 45, on a petition presented by the executors of a shareholder

of 10 shares therein, although the directions were to buy and sell for ready money only, and the company's debts had therefore been wrongly contracted.

This was the petition of Roger K. Harvey, and John Rankin, the executors of John Harvey, who held 10 shares and had executed the deed, of partnership under the 7 & 8 Vict. c. 110, for the dissolution and winding up of the above company, under the 13 & 14 Vict. c. 125: Roupell and E. Yonge in support.

R. Palmer, former member of the company, contra. The directors were to buy and sell for ready money only, and had wrongly contracted the liabilities of the company: Turner, for the company, did not oppose.

The Master of the Rolls made the order as prayed. The objection was insufficient to this petition, which was on behalf the representatives of a deceased partner for the dissolution and winding up of the affairs of the partnership.

Jan. 23.—*Ballinger v. Howell*—Reference to the Master as to moneys due to deceased debtor's estate.

25.—*Anon.*—Injunction to restrain defendants from receiving stock or procuring transfer thereof.

25, 26.—*Hall v. Hall*—Injunction granted to restrain the defendant from receiving and collecting the partnership debts.

26.—*Attorney-General v. Marquis of Bristol*—Reference to the Master in writ to set aside modus.

26.—*Attorney-General v. Wilmshurst*—Reference to the Master to approve of a proper scheme for managing charity estates.

28, 29.—*Thornes v. Sheard*—Part heard.

Vice-Chancellor of England.

Jan. 24.—*Attorney-General v. Andrews and others*—Injunction to restrain defendants from paying moneys arising from waterworks received under their act of parliament, towards extending or altering their powers.

26.—*Esparle Independent Assurance Co.*—Order for winding up on petition of three directors and shareholders.

26.—*In re Fagg's Trust*—Order for payment out of Court to new trustees with costs occasioned by the former trustees paying the fund into Court, under the Trustee's Relief Act.

24, 26.—*Chambers v. Wright*—Injunction to restrain the plaintiff from procuring a rule nisi to set aside deed for informality for and by.

23, 26, 28.—*King of the Two Sicilies v. Peninsular and Oriental Steam Packet Co.*—Injunction dissolved with costs.

28, 29.—*Same v. Same*—Cur. ad. vult.

29.—*Wieller v. Petschenhoff*—Injunction to restrain defendant's agent from parting with bill of lading or cargo of vessel.

Vice-Chancellor of the County of Middlesex.

Jan. 23.—*Ex parte Balcroft and another, in*

re Maclean—Proof allowed of two bills of exchange for 25000*l.* each.

23.—*Esparle Hill, re Hill: Bennett, respondent*—Stand over for action at law, but execution not to issue without leave.

24.—*Esparle Litchfield, re St. George's Steam Packet Company*—Motion refused, with costs, to reverse Master's decision inserting petitioner's name in list of contributories.

24.—*Holland v. Thelmin*—Stand over to establish parent at law—accounts in meantime to be kept.

24.—*Dart v. Johnson and South Western Railway Company*—On motion, case directed for opinion of Court of law, without consent.

25.—*In re London and Southend Railway Company*—Order for winding up.

25.—*In re Hemp and Flax Manufacturing Company*—The like.

25.—*In re Eastern Counties Junction and Southend Railway Company*—The like.

25.—*In re Midland and Eastern Counties Railway Company*—The like.

25.—*In re Great Welch Junction Railway Company*—The like.

26.—*Prentice v. Tubor, Same v. Marriot*—Judgment on construction of will.

26.—*Reed v. Lord St. Vincent*—Part heard.

28, 29.—*Wyke v. Newcombe*—Cur. ad. vult.

29.—*Hayward v. Pursey*—Arrangement as to costs.

Vice-Chancellor of the County of London.

Comins v. Bishop Jan. 11, 1850.

RE-EXAMINATION OF WITNESSES.

An order was made to re-examine a witness as to other facts, although the witness had already been examined in chief.

This was a motion for leave to examine a witness either before the Master or the Examiner and Commissioners in this cause, as to the agency of John Crofts, the witness to a statement of account entered into and settled by Mary Dean, as the executrix of the testator John Dean. It appeared the witness had been examined in chief as to the hand-writing of Crofts only, but not as to the agency. The plaintiff relied on this statement of accounts in support of part of their claim from the estate of the testator.

The Solicitor-General and Mackeson in support of the motion, which was opposed by R. Prior, citing *Stacey v. Wilmshurst*, 1 My. & Cr. 351.

The Vice-Chancellor, however, granted the motion for the examination of the witness, on the authority of *Manson v. Burton*, 2 My. & Cr. 260.

Jan. 23.—*Love v. Graham*—Esparle injunction to restrain defendant from parting with bill separating his premises from plaintiff's.

23, 24.—*Newman v. St. John*—Bill dismissed with costs, with leave to file another bill.

- 23, 25.—*Winstorp v. Murray*—Bill dismissed without costs.
 — 25.—*Wilkins v. Naisby*—Stand over.
 — 27.—*In re Shipowners' Assurance Co.*—Order for winding up.
 — 25, 26, 28.—*Price v. Griffiths*—Cur. ad. vult.
 — 28, 29.—*Burt v. Barham*—Judgment on construction of will.
 — 29.—*Kekewick v. Mausing*—Part heard.

Court of Queen's Bench.

Regina v. Bryon and others. Jan. 14, 1850.
 INDICTMENT UNDER 25 G. 2, c. 36.—CENTRAL CRIMINAL COURT ACT.—CERTIORARI.

An indictment under the 25 G. 2, c. 36. removed from the Middlesex Quarter Sessions to the Central Criminal Court, under the 4 & 5 W. 4, c. 36, s. 16, may be removed by certiorari into this Court, as if the bill had originally been found in the Central Criminal Court.

This was a motion for a writ of *procedendo* in an indictment under the 25 G. 2, c. 36, for keeping a disorderly house for music and dancing without a license, and which had been removed from the Middlesex Quarter Sessions to the Central Criminal Court, under the 4 & 5 W. 4, c. 36, s. 16, and upon the order of *Patteson, J.* at chambers, from thence to this Court by certiorari.

M. Chambers, in support, contended that the 4 & 5 W. 4, c. 36, (the Central Criminal Court Act) did not repeal the 25 G. 2, c. 36, s. 10, which prohibited the removal of indictments under that act by certiorari to this Court, but merely substituted the Central Criminal Court for the Quarter Sessions.

The Court held, that the 4 & 5 W. 4, c. 36, s. 16, gave power to the justices of Middlesex, without a certiorari, to remove any indictment for misdemeanour into the Central Criminal Court, and it was there to be dealt with in the same way as if it had been originally found in that Court. The motion would therefore be refused.

Jan. 23.—*Columbine v. Pennell*—Cur. ad. vult.

— 23.—*Gaskill v. Sheen*—Rule discharged for new trial.

— 24.—*Regina v. Mahon*—Prisoner indicted under 49 G. 3, s. 126, sentenced to 12 months imprisonment in Queen's Prison amongst misdemeanors of first class.

— 25.—*Blanchard v. Ripley*—Rule nisi for new trial.

— 25.—*Tampenny v. Miller*—Rule refused for new trial.

— 25.—*Ball v. Wells*—Rule refused for new trial.

— 25.—*Hoare v. Comland*—Plaintiff suing to force *gasperis* held not compellable to pay fees before judgment signed, although verdict obtained for more than 5l.

— 25.—*Newton v. Krowd*—Rule for nonsuit on payment of costs.

— 25.—*Houlden v. Smith*—Part heard.

— 25.—*Burton and another v. Cresswell*—Cur. ad. vult.
 — 26.—*Regina v. Abordare Canal Company*—Cur. ad. vult.

— 28, 29.—*In re William Henry Barber*—Rule nisi granted for removal of certificate on the motion of *Wilkins, S. L.*; Sir F. Theiger showed cause in the first instance. Further hearing postponed till after Term.

Queen's Bench Practice Court.

(Coram Mr. Justice Wightman.)

Harrison v. Newton. Jan. 17, 1850.

ENLARGED RULE.—HEARING BEFORE THE FULL COURT.

An application was granted on the request of the defendant, to have an enlarged motion to set aside a discharge on the ground of fraud, heard before the full Court.

Edwin James moved to take this case from the paper in this Court, and to allow it to be heard in full Court, on the ground that it would be more speedily decided, and that it involved the character of the defendant. A rule nisi had been granted to set aside the defendant's discharge on the ground of misrepresentation, but which was subsequently enlarged, and entered in the enlarged rule paper of the Court.

Rogers, for the plaintiff contra, on the ground that he had had no opportunity of consulting his client as to the application.

The Court granted the application. There was no reason for refusing the application by either party to have the case argued before the full Court.

Jan. 23.—*Regina v. Justices of Birmingham*

— Rule nisi for mandamus against justices to hear summons, under 8 Vict. c. 18, s. 48.

— 24.—*Regina v. Rice and another*—Rule nisi on prosecutor to deliver to defendant a particular in writing of charges contained in indictment removed by certiorari into Queen's Bench.

— 25.—*Ex parte Purday*—Rule nisi on plaintiff to discharge defendant out of custody.

— 26, 28, 29.—*Regina v. Davey*—Rule absolute.

— 29.—*In re Oswestry Union*—Rule nisi for mandamus to poor-law guardians to allow inspector appointed by Commissioners to be present at their meetings.

— 29.—*Idem*—Rule nisi to strike attorney off the roll for allowing unqualified person to practice in his name, and to commit this latter to prison for contempt.

Common Pleas.

Blacketer and others v. Gillett. Jan. 15, 1850.

INFRINGEMENT OF RIGHT OF FERRY.—ACTION.—DECLARATION.

In an action for infringement of a right of ferry, the declaration averred the existence thereof, and the plaintiff's right thereto, and that the defendant intending to disturb the

plaintiff in his right, wrongfully carried passengers and horses across the river, near the plaintiff's ferry: Held good, although it did not go on to aver that the defendant disturbed the plaintiff's ferry, or set up a new one, or carried the said passengers across fraudulently, and in evasion of the plaintiff's right.

THE declaration in an action by the plaintiffs, on behalf of the Society of Free Watermen of the River Thames, for an infringement of a right of ferry for foot-passengers and their luggage, from the Isle of Dogs to Greenwich, averred the existence of an ancient ferry and the plaintiff's right, and that the defendant wrongfully and injuriously, and against the plaintiff's will, carried certain persons across the river near their ferry. At the trial before *Wilde, L. C. J.*, at the Middlesex Sittings after Michaelmas Term last, a verdict was found for plaintiffs.

Peacock now moved in arrest of judgment, on the ground that the declaration did not aver that the defendant had set up a new ferry, or had fraudulently carried passengers across the old ferry, and in evasion of the plaintiff's right.

The Court held, the declaration was good after verdict, and refused the rule.

Jan. 23.—*Phillips v. Pickford*—*Cur. ad. vult.*

—24.—*Kincaid and others v. Willis*—*Cur. ad. vult.*

—24.—*Regina v. Mill*—Rule absolute by consent to amend specification of patent in proceeding by *sci. fa.* for repeal thereof.

—25.—*Navone v. Hadden*—On special case, judgment for defendant.

—25.—*Temple v. Slade*—On demurrer, plea to be amended.

—25, 26.—*Storis v. Bishop of Winchester*—On demurrer, judgment for the plaintiff.

—26.—*M'Kenzie v. Shigo and Shannon Railway Company*—Rule discharged without costs to pay amounts directed under award.

—26.—*Clarke v. Smith*—Rule nisi on attorney to pay over moneys to plaintiff or his attorney.

—26.—*Hore v. Silverlock*—Rule discharged to attach witness for non-attendance in obedience to subpoena.

—28.—*Speer v. Ward*—Rule absolute for new trial.

—28.—*Cubitt v. Purdy*—Rule nisi for habeas corpus of prisoner committed under warrant of County Court Judge.

—29.—*Bell, P. O., v. Welsh and another*—Rule absolute for nonsuit.

—29.—*Turner v. Nye*—Rule refused to discharge defendant from custody.

Essex.

Macgregor v. Kirby. Jan. 12, 1850.

JOINT-STOCK COMPANIES' WINDING-UP ACT.
—STAY OF PROCEEDINGS BY CREDITOR.

A rule was made absolute to stay proceedings

against a member of a joint-stock company, under s. 73 of the 11 & 12 Vict. c. 45, where an order for dissolution and winding up had been made, until the creditor had proved his debt before the Master in Chancery.

THIS was a motion for a rule to stay the proceedings in an action by defendant, to recover the amount of the plaintiff's bill as solicitor to the Midland Junction Railway Company against the defendant, as a provisional committee-man. A verdict for 840*l.* had been recovered, and a petition presented under the 11 & 12 Vict. c. 45, for the dissolution and winding-up of the company.

Corrie, in support, referred to the 73rd section of the 11 & 12 Vict. c. 45, which provides that "after the first appointment of an official manager, no creditor or other person shall, except so far as the Master shall permit, have power to commence or to proceed with any action against the official manager, or against the company, or any other person representing the same, or who is sued as a contributory thereof, until after proof, or exhibiting or making such proof as he may be able, of his debt before the Master;" and that "it shall be lawful for any judge of the Court in which such action shall be pending, upon summons taken out before him for that purpose, to order that all further proceedings in such action be stayed until after such proof shall have been made or exhibited before the Master."

Willes showed cause. The company had never been incorporated or completely registered, and the case of *Walstab v. Spottiswoode*, 15 M. & W. 501, enabled the plaintiff to recover against a member of the committee, who could afterwards prove before the Master.

The Court said, that the 11 & 12 Vict. c. 45, s. 73, applied to the present case, and made the rule absolute to stay the proceedings until the plaintiff had proved his debt before the Master, in accordance with that section.

Jan. 23.—*Cobbett, a pauper, v. Sloman*—On demurrer, judgment for defendant.

—23.—*Cobbett, a pauper, v. Oldfield and others*—On demurrer, judgment for defendants.

—24.—*Moseley v. Houghton*—Rule nisi for new trial.

—25.—*Carr v. Mostyn*—*Cur. ad. vult.*

—26.—*Edwards v. Rogers*—Rule discharged for *certiorari* to remove plaint out of County Court, or for prohibition.

—26.—*Towne v. Henderson*—Rule discharged for new trial.

—26.—*Cobbett, pauper, v. Sir G. Grey and another*—Rule discharged to set aside certificate granted at chambers to deprive the plaintiff of costs.

—28.—*Byder v. Mills*—*Cur. ad. vult.*

—29.—*Bruce v. Forrest*—Rule nisi to rescind judge's order for a capias.

—29.—*Wills v. Murvey, executrix*—Part heard.

The Legal Observer,

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SATURDAY, FEBRUARY 9, 1850.  
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STATE OF LAW BILLS IN PARLIAMENT.

SEVERAL of the Bills for the alteration of the Law, which we noticed last week by anticipation, have already made their appearance in one or other of the Houses of Parliament. In rank and importance, Lord Brougham's Code of Bankrupt Law stands first. This bill has just been printed. It is in the same form as that of last Session, when first introduced. There are 8 Clauses in the Bill, with a Schedule of 354 "Articles," and an Appendix of Forms, in all occupying 124 folio pages. We are unable at present to point out the alterations in the law which are proposed to be effected. Indeed, a Paper of Observations is promised by the bill, explanatory of its objects, and of the amendments and alterations; and when published we shall have a full opportunity of considering the measure.

In the same department of the law, the Lord Chancellor has introduced a Bill for uniting the Office of Secretary of Bankruptcy with that of Chief Registrar, whereby a considerable amount of salary will be saved to the Bankruptcy Fund. The scope of this bill is as follows:—

To provide that the Secretary of Bankrupts shall be *ex-officio* Chief Registrar of the Court of Bankruptcy, and that the salary of the Chief Registrar shall be abolished.

The Lord Chancellor is also to be empowered to appoint any Registrar of the Bankruptcy Court to act as Secretary of Bankrupts and Chief Registrar during any vacancy.

And that all acts and proceedings in the Registrar's Office since the death of the late Chief Registrar, shall be confirmed.

Next in importance comes Mr. Drummond's Bill for "facilitating the Transfer

of Real Property." We have not yet seen the project of the present Session, but understand it will be the same as the last: namely, an optional Registration of Title Deeds, and rendering Titles absolute after the expiration of 30 years from registration and notice in the *London Gazette*. It is also proposed that estates may be transferred by a short entry on the Register in lieu of the present form of conveyance.

We shall call the attention of our readers, as soon as the bill is printed, to the means by which these extraordinary results are proposed to be effected. It will be recollected that last Session, the bill was referred to a Select Committee. We are not aware that any report was made to the House, and presume that a reference must again take place before any progress can be made with the bill. Moreover, the House will expect to see the Report of the Real Property Commissioners, and will duly consider their views for "relieving the burdens upon land;" indeed the same object as that proposed to be effected by Mr. Drummond, is an essential part of the duty of the Commissioners. We have heard that there is a difference of opinion on the main point of Registration, but that the majority of the Commissioners are in its favour.

We are looking for the Solicitor-General's Bill on Charitable Trusts, of which, as we expected, notice has been given; and the attention of the profession will, no doubt, be particularly directed to the *extent* of this measure, and the *means* by which it is to be carried into effect.

Of nearly equal moment is the Bill relating to the management of Highways, intended to be introduced by Mr. Cornwall Lewis. In this department of legislation there are also some other measures announced,—namely, by Mr. Frewen for the Union of Parishes and the appointment of

Surveyors of Highways, and probably of the Clerks or Solicitors to the Trusts. A Bill for the better regulation of County Rates and Expenditure has already been brought in by Mr. Milner Gibson. The clauses in these bills require careful attention on the part of the profession, and which we doubt not will be bestowed by the committees and secretaries of the several law societies. We shall lend our best aid in protecting the rights and interests of the practitioners both in town and country.

To the foregoing measures, which appear, in this early stage of the Session, to be of considerable importance, we shall probably have many others to add. The motion for leave to bring in the bill for repealing the Certificate Duty, will soon be appointed by Lord Robert Grosvenor. There will, of course, be an Annual Registration, and which will require to be strictly observed for preventing frauds by unqualified persons. The clauses for that purpose have been, we believe, carefully prepared, and we hope our readers will have an early opportunity of perusing them.

Mr. Fagan has obtained leave for a bill to improve the Law relating to Assignments of Policies of Life Insurance, which appears to be a proper measure.

A few other bills remain to be noticed,—viz., Proceedings against the Clergy, introduced by the Bishop of London;—the Amendment of the Ecclesiastical Commission, proposed by the Lord President;—and the alteration of the Law as to Benefices in Plurality, brought in by Mr. Frewen. The extension of the Summary Jurisdiction of Magistrates on Larceny Cases, is proposed by Sir J. Falkington and the Exemption from Rates of Small Tenements, by Mr. Hailey.

We have thus given our readers a bird's-eye view of the present state of matters in parliament, in which was affecting their interests, and, at a convenient time, call their attention to the progress which these and other plans of Law Reform or alteration may make, again inviting the consideration of such suggestions as may appear to be useful and tend to the benefit of the profession.

REVIEW OF CASES DECIDED IN HILARY TERM.

Among the numerous cases of great importance which have been argued during this session, the necessity of cases of this description actually determined is remarkable; but it may be

accounted for by the circumstance that it has now become usual for the Courts of Law to fix a day, after the sitting in Bank has concluded, for the sole purpose of delivering judgment in cases requiring consideration and standing for judgment from the Term and after sitting. In pursuance of this arrangement the Court of Queen's Bench has fixed Tuesday, the 26th February, and the Courts of Common Pleas and Exchequer have appointed Monday, the 25th February, for giving judgment in cases previously argued.

The most important question decided during the Term is undoubtedly the affirmance of the judgment of the Court of Queen's Bench in the *Brantree Church Rate Case*, by the Exchequer Chamber sitting in error. Whether considered with reference to the subject-matter of the dispute, the protracted and varied nature of the litigation to which it has given rise, or the diversity of opinion exhibited by those who have been from time to time called upon judicially to express an opinion upon it, the case must be regarded as one of the most remarkable in our day. All the authorities concur in admitting it to be the established law that parishioners are bound to provide for the repairs of the parish church; and the question which has given rise to so much discussion, and it is to be feared to much bitterness and hostility, in the *Brantree* case, is, how the liability of the parishioners is to be enforced when a numerical majority are adverse to the imposition of any rate for the purpose of such repairs. Where a majority of the parishioners refused to make the rate, and the churchwardens, upon such refusal, made the rate, the Court of Queen's Bench held, that the churchwardens in so doing exceeded their duty, and that the rate was invalid, and that decision was affirmed on error in the Exchequer Chamber. In the judgment of the Court of Error, however, it was suggested that, although the churchwardens had no power to make a rate, yet if a majority of the parishioners assembled in vestry declined to make any rate for the purpose of needful repairs, the numerical minority might legally make such a rate, upon the principle that the minority could bind the majority. But in analogy to the principle frequently applied in regard to corporate elections, that parties who dissented from the purpose of the meeting al-

together, threw away their votes, and were no more to be regarded in the computation than if they were silent, or wholly absent. Upon this principle it was suggested it might be held that a legal majority voted for the rate, though a numerical majority of the vestrymen present were adverse to its imposition. As might have been anticipated, the soundness of the doctrine thus laid down was soon tested. A monition having issued from an Ecclesiastical Court, calling upon the churchwardens to call a vestry for the purpose of making a rate for repairs, the vestry was assembled—a rate for repairs proposed and seconded, which was met by an amendment objecting to compulsory church rates, and refusing to make any rate, which amendment, on the show of hands, was declared to be carried. No other amendment was proposed, and the churchwardens, with the minority of the vestry present, then made a rate according to the original proposition, the validity of which rate was the subject of the present litigation. The churchwardens proceeded in the Ecclesiastical Court to enforce payment of the rate so made against a parishioner, and were there met by the objection, that a rate made under such circumstances was illegal, and could not be enforced. Dr. Lushington, the learned judge of the Consistory Court, in a very elaborate judgment decided, that the churchwardens and minority had no such power as they sought to exercise in this case, but upon appeal to the Archdeacon's Court, the judgment of Dr. Lushington was reversed by Sir Herbert Jenner Fust.² The case was then brought before the Queen's Bench by prohibition, and the plaintiff Gosling having declared in prohibition, setting forth the facts and circumstances under which the rate was made, the matter came before the Court upon general demurrer, and that Court determined in favour of the defendants in prohibition, upon the ground thus stated by the learned reporters of that Court. "That the persons voting for the amendment must be considered as having declined to join in the proceedings of the meeting, the amendment having no reference to the object for which the vestry was summoned under monition; that the persons so voting, therefore, left the question in the hands of the remainder, and that the rate was legally made."³ This judgment has been now confirmed by the Court of

Error, not however unanimously, but by a bare majority of the learned judges constituting the Court of Appeal. It is scarcely reasonable to expect that a decision in such a case, pronounced under such circumstances, will settle the matter in dispute. It is more than probable that the question will be speedily raised in a different shape, either in Baintree or some other parish, unless the legislature should interpose—as we venture to think there was long since good reason to do—and put an end to an unseemly and acrimonious contest, by specifically declaring by what means and in what manner the law is to be enforced, and unwilling parties compelled to perform what no lawyer denies to be their duty.

As already intimated, (*ante*, p. 227,) the decision of the Court of Queen's Bench in the matter of *Dimes*, proceeded upon a ground totally distinct from the important question which it was intended to raise in the case, namely, whether an order for committal made by a judge, having a personal and pecuniary interest in the cause, could be supported upon legal principles? It turned out, upon the return to a writ of *habeas corpus*, that Mr. Dimes was in custody upon an order made by the Vice-Chancellor of England; and although the order was counter-signed "C. G." which was taken to mean Cottenham, Chancellor, the Court could only consider it to be, as it purported, the order of the Vice-Chancellor. As the Vice-Chancellor had determined that a contempt was committed in a matter in which he had clearly jurisdiction to decide; the Court of Queen's Bench upon the principles laid down in the case of the House of Commons and the Sheriff of Middlesex, declined to interfere, and remanded Mr. Dimes to the custody of the Marshal of the Queen's Prison.

A case of *Rogers v. Edwards*, was argued before and determined by Mr. Baron Rolfe, sitting alone in the Exchequer Chamber, which, as it involves a question as to the jurisdiction of the Superior Courts in respect of plaintiffs entered in the County Courts, is not undeserving of notice. The facts of the case were shortly as follow:—A farmer entered a plaint on the 1st November last, in the County Court of Montgomery, against a proprietor of lime-kilns in his neighbourhood, for alleged injury to his crops, by reason of the gases and vapours generated by the lime-works. The damages in this plaint were laid at 20*l.*, or such lesser sum as the Court should award. Before any further proceeding was taken

² 3 Curt. Ecc. Rep. 256.

³ 3 Curt. Ecc. Rep. 304.

⁴ See marginal note to *Gosling v. Teley*, 7 Q. B. 416.

upon the plaintiff, the defendant applied to a Judge at Chambers, under the 90th section of stat. 9 & 10 Vict. c. 95, and obtained an order for the removal of the cause by *certiorari* to the Court of Exchequer, upon the ground that the suit was one fit to be tried in one of the Superior Courts. The section under which this order was granted is in these terms:—

"That no plaint entered in any Court holden under this act shall be removed or removable from the said Court into any of her Majesty's Superior Courts of Record, by any writ or process, unless the debt or damage claimed shall exceed five pounds, and then only by leave of a judge of one of the said Superior Courts, and upon such terms as to payment of costs, giving security for debt or costs or such other terms as he shall think fit."

The original plaint having been removed by *certiorari*, the plaintiff, the next Court day, entered a second plaint for the same cause of action, but claiming damages not exceeding 5*l.*; and a rule was then obtained to show cause why this second plaint should not be removed by *certiorari*, or why a writ of prohibition should not issue, on the ground that a suit for the same cause of action was already depending in the Superior Court. The rule was fully argued, and after taking time to consider, the learned Baron was of opinion that the power to grant a *certiorari* was taken away, and the plaint being one which the County Court had jurisdiction to entertain, the Court of Exchequer had no jurisdiction to issue a writ of prohibition. The rule was, therefore, discharged, the plaintiff's counsel undertaking not to proceed in the cause removed by *certiorari*. Assuming, as we are bound to do, that the judgment in this case gives a correct exposition of the state of the law, it follows, that although it may be desirable in the opinion of a judge of the Superior Courts, that a cause should be tried in one of these Courts rather than in the Inferior Courts, and although the action involves consequences to which the amount of damages claimed may have no relation, yet if the damage claimed does not exceed 5*l.*, and the County Court is not expressly interdicted from adjudicating upon it,⁶ there

⁶ The cases excepted from the jurisdiction of the County Courts, as enumerated in the proviso to the 58th section, are as follow:—"Any action of ejectment,—or in which the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise, shall be in question,—or in which the validity of any devise, bequest, or limitation under any will or

are no means by which a party need bring the consideration of his case before any other tribunal.

The cases argued in Hilary Term and not yet determined, will be more conveniently and advantageously reviewed, after the Courts have met for the purpose of delivering judgment.

MR. CHARLES PHILLIPS' DEFENCE OF COURVOISIER.

THE "EXAMINER," AND THE "LAW REVIEW."

LAST week we thus noticed an application which had been made to us by one of our correspondents. "Our correspondent H. K. is mistaken in supposing that we defended the practice imputed to Mr. Phillips. *We defended him because we did not believe the charge was well founded.*" Little did we imagine, while penning this sentence, that the correctness of the opinion which it conveyed, was within a day or two of being established by evidence irrefragable! In the current number of the *Law Review*, which is known to be the organ of the Law Amendment Society, to be edited by a gentleman of high professional standing, and supported by some of the most eminent and distinguished persons both on the bench and at the bar, the last article (No. X.) is headed "*The Practice of Advocacy.—Mr. Charles Phillips and his defence of Courvoisier.*" The style of this article is at once so chaste and so brilliant, and the narrative conducted with such effective skill, that, long and elaborate as it is, no reader is likely to pause till he has come to the very last line on the last page. The demonstration of Mr. Phillips' innocence of the charges which have been originated and for so many years perseveringly reiterated by the *Examiner*, is positively irresistible, and calculated to make the gentleman so unjustly traduced an object of universal sympathy and respect. We cannot charge our memory with having ever read a vindication at once so conclusive to even a strongly prejudiced mind, and so temperate and dignified in tone throughout. This of itself argues a writer of a superior order, and conscious of the impregnable strength of his case: for it is very evident that he

settlement shall be disputed,—or for any malicious prosecution, or for any libel or slander, criminal conversation, seduction, or breach of promise of marriage."

could, had he been so disposed, have vigorously denounced the mode of treatment to which Mr. Phillips has been so long exposed. He had the opportunity afforded him: for he has established each a series of suppressions as, unless the *Examiner* can disprove the accusation, most very seriously if not irreparably impair its character as a British journal. Its main charges against Mr. Phillips have been, that with a knowledge of Courvoisier's guilt, he tried to fix that guilt on the women servants; advanced the foulest charges against the police, knowing the groundlessness of such charges; defamed an important witness Mr. Piolane; and, appealed to the Almighty to attest either his belief that Courvoisier was innocent, or at least that he, Mrs. Phillips, knew not who was guilty. The first charge rested on a single passage in the "defence" of Mr. Phillips. That passage was the following, beginning with the third sentence, and ending with the last but one; and our readers will observe that it occurs in a paragraph devoted solely to the disproof of an argument used by the counsel for the prosecution, that the prisoner's agitation was a proof of his guilt, and the judge adopted the reasoning of Mr. Phillips!

"The first imputation on the prisoner, by Mr. Adolphus, was his agitation. Let them try that by the test of their own hearts and consciences. The prisoner had seen his master retire to his peaceful bed, and was alarmed in the morning by the housemaid, who was up before him, with a cry of robbery, and some dark mysterious suggestion of murder. Let us go, said she, and see where my lord is! He did confess that that expression struck him as extraordinary. If she had said, let us go and tell my lord that the house is plundered, that would have been natural; but why should she suspect that aught had happened to his lordship? she saw her fellow-servants safe, no taint of blood about the house, and where did she expect to find her master? why in his bed-room to be sure. What was there to lead to a suspicion that he was hurt? Courvoisier was safe, the cook was safe, and why should she suspect that her master was not safe too? If he had heard the character of that nobleman right, there was never a man who breathed had less reason to suspect or dread a foe. But Courvoisier did as he was desired."

It is on the above passage alone, that the *Examiner* relies to prove its charge: having for ten years, it would seem, systematically suppressed the all-important pas-

sage, occurring only a few sentences subsequently, in the very same paragraph. "BUT WHEN MR. ADOLPHUS CALLED ON THEM TO MARK THE AGITATION OF THE PRISONER AS A PROOF OF GUILT, WHAT BECAME OF THE WOMEN WHO SHOWED THE VERY SAME FEELINGS? HE THOUGHT THE BETTER OF THESE WOMEN FOR DOING SO! GOD FORBID THAT HE SHOULD INSINUATE IT WAS A PROOF OF THEIR GUILT! IT WOULD APPEAR TO HIM, ON THE CONTRARY, TO BE A PROOF OF THEIR INNOCENCE!"

Here are three distinct, solemn, emphatic statements, each stronger than the preceding, one tending to the total exculpation of the women servants; and is it possible to believe that they were overlooked! But this is not all. A passage of a similar tendency, and almost equally strong and decisive, at the commencement of the speech, has been similarly dealt with,—the existence of it never once even alluded to by the *Examiner*, and never suspected by ourselves even, till Mr. Phillips brought it to light in his recent letter to Mr. Warren! The very first mention which Mr. Phillips had to make of the name of Sarah Manser, (the woman whom it is pretended that he sought to incriminate,) he thus heralds in, the words in brackets being the only ones quoted by the *Examiner*:—"What said Mr. Adolphus, and his witness Sarah Manser? And here he would beg the jury not to suppose, for a moment, in the course of the narrative with which he must trouble them, that he meant to cast the crime upon either of the female servants! It was not at all necessary to his case to do so! He wished not to asperse them! [God forbid that any breath of his should send tainted into the world persons, perhaps, depending for their subsistence upon their character. It was not his duty, nor his interest, nor his policy to do so.]" All this appears to us utterly inexcusable—as gross a perversion of the meaning and tendency of words uttered by another, as has ever come under our notice; and we are unfeignedly curious to see how the *Examiner* can explain or extenuate its conduct. It is evident that in the commentary of Mr. Phillips, on which the *Examiner* founds its imputation, all that that gentleman, as suggested by the reviewer, intended to convey to the jury, was a suggestion that people in a state of agitation might utter expressions inaccurate, and not to be depended on. "What becomes," says the writer in question, "of the alleged cruel and infamous insinuation in the solitary comment in ques-

tion, preceded, as it is, and followed, as it is, by full emphatic disclaimers and protests? Regarded fairly, as a link in the chain of argument, the real drift of that statement is, that the jury might regard what fell from Sarah Manser, on this and other occasions, as inaccurate—as an exclamation not justified by the appearances around her at the time; for proved circumstances are recited showing that she could then have had no reason for suspecting personal injury to her master."

"Nothing," as this author justly observes, "could have sustained the *Examiner's* charge, but "proof that the general tendency of Mr. Phillips' speech was to save his client by incriminating the women servants; whereas it was precisely the reverse." He also puts some unanswerable questions. Had Mr. Phillips sought to commit this atrocious act, how could Mr. Baron Parke have sat by in silence, thereby making himself almost a party to the act? How could Lord Chief Justice Tindal have made no allusion to so shameful an insinuation against a female witness, which must have been, on the evidence before him, equally unfounded, and unjustifiable? And we would ourselves venture to ask another question,—would it not have been the duty of Mr. Baron Parke to have called the attention of the Lord Chief Justice to the fact, that nothing, on the evidence, warranted such imputations? Nothing of the sort was done by either: the Lord Chief Justice makes only a passing allusion to the comment of Mr. Phillips,—“In looking at expressions made use of by parties in a state of anxiety and alarm, the jury would not have to construe the words to their strict interpretation.”

There is not a suggestion of censure, of any sort on the advocate; and both the Lord Chief Justice and Mr. Baron Parke are proved, after hearing of the calumnies against Mr. Phillips, to have declared them totally unfounded; that what he had said had been greatly misrepresented; that under accumulations of extraordinary difficulty he had properly discharged a most painful duty; and the Lord Chief Justice “made such representations as removed every prejudice to Mr. Phillips' prejudice.” How this could have been, and yet the *Examiner's* monstrous charge be well founded, we are at a loss to conceive; and we concur with the learned reviewer, that this consideration alone ought to settle the question. This, however, is only one charge. The others are, if possible, still more completely disposed of; and we shall decide our notice of this kindly

and most satisfactory article in our next number, cordially congratulating the learned Commissioner in the meantime on the triumphant vindication of his character and honour effected by the *Law Review*.

THE CASE OF WM. HENRY BARBER.

WE have received the following Letter from Mr. Barber's solicitor, and of course give it immediate insertion. The two Reports of the Master were read in open Court, and surely we have a right to place correct copies of them before the profession. Since the hearing took place, several articles have appeared in an Evening Paper,—some of the inaccurate statements in which must have been supplied by, or in behalf of Mr. Barber. We have no wish to discuss the case whilst it is under the consideration of the Court; but vehement censure having been cast on the Incorporated Law Society, and on many of the gentlemen who have given evidence in the case, we deemed it right to publish the First Report, but without note or comment.

As Mr. Barber's solicitor appears to object, at the present stage of the proceedings, to the publication of the Reports, we shall defer the Second Report:—waiting to see whether Mr. Barber will also defer his communications to the newspapers until the decision of the Court.

The Speech of Mr. Serjeant Wills, which occupied a day and a half in the delivery, has been published in all the Newspapers, and it can scarcely be necessary to re-publish it here. Our readers, as well as the public in general, are in possession of all that has been said in Mr. Barber's behalf in opposition to the Report; and they have only heard part of the argument for the Law Society.

The following is the letter referred to in Sir John's publication of Saturday last. I perceive that you have given a copy of the first branch of the Master's Report upon this inquiry, without correcting or adding the many important errors and misstatements which occurred. These were pointed out to the Court in your presence, and were either admitted by the Master or Sir Frederick Thesiger. It would be most any that to disregard your publication of this Report, without these corrections, is the slightest notice of its inaccuracies, is most unkind and manifestly tend to mislead your readers. I must trust the best arguments and the best opinions of the profession are not to be thus treated. I am, Sir, your obedient servant, J. H. M. The Master's Report was given in the Law News, omitting Mr. Barber's explanation of the facts. The Court were informed of the facts by the profession at all; but the object was merely

If, at the present stage of the proceedings, you think it right to publish, as you have expressed an intention of doing, the second branch of the Report, I trust you will see the propriety of going at the same time to the observations upon it by Mr. Serjeant Wilkins, in which many vital errors and omissions are clearly shown. A contrary course will aggravate an injury which, I believe, your first unfair publication has, to some extent, already done Mr. Barber.

In a note, you say, alluding to the cases of alleged mal-practice:—"There are six of these cases. The Master decided that two of them were not established, and the third was withdrawn by Sir Frederic Theaiger."

This is most disingenuously put. The reader would, of course, infer that the Master had decided that four of the cases had been established, which you must be well aware from this Report itself is not the fact.

The Incorporated Law Society thought proper to incur the inquiry with the investigation of six cases, and at the last moment to refuse to go into three of them, although apparently pressed by Mr. Serjeant Wilkins to do so.

The effect of your publication of Saturday last, I trust you will infer from this letter in your next.

(Signed) A. STEVENSON.
12, Essex Street, Strand, 6th Feb. 1850.

COUNTY COURT OF YORKSHIRE.

York Castle, January 26th, 1850.

THE *Judge* (Mr. Serjeant Dawling) addressing the members of the profession, said, a motion was made about last November, and which has been adjourned from time to time. Do you repeat your motion?

Mr. Blomfield—No, your Honour, I withdraw the motion.

The *Judge*—Then we have another on which considerable discussion has taken place, and a good deal of interest has been excited, not only in this but in other Courts, and as it is a matter on which some difference of opinion exists amongst County Court Judges, and some difference of practice is important that I should settle this matter as far as this Court is concerned, by a rule of Court. When it was known that was intended to, to settle this matter, some communications were made to me by the other branch of the profession, in which they set forth the grounds on which they were ready to claim the right of communication with the bar, and those communications were made to me, and I have not broken the seals, and therefore do not know what the grounds are of how good they have got the best opinions and the best arguments in support of their side of the question. Mr. Blomfield? When he made this motion, did not treat the matter as a question of right, or as a matter of right, between the two branches of the profession at all; but the object was merely

to know how, in the altered state of the law, arising out of the County Courts Act, they stood in reference to each other, to their clients, and to the public. It was not to create any matter of conflict at all, but merely that the matter might be settled as far as the bar was concerned, that those communications have been made by the gentlemen to whom I have alluded. I merely wish to mention, that as it is my wish to take the opinion of the Attorney-General again on the subject, and to consider the subject still further, I have kept my mind entirely open and have not looked at the communications. I may ask, whether there is any objection on the part of the Bar that I should look at the communications of the other branch of the profession, and see what the arguments are, in order that I may come to a conclusion that will be in accordance with law and satisfactory to the profession, and for the interest of all parties concerned.

Mr. Blomfield—I believe they are all quite unanimous as to this; they are most willing that you should look at those communications. We are desirous that you should have all the information on the subject; I believe they are memorials from different societies, in fact, representing the profession throughout all England—societies in London, Leeds, York, and, I believe, Manchester. The Bar have are quite content to leave it in your hands entirely.

The *Judge*—And there is no objection to my looking at these communications.

Mr. Blomfield—No. We do not wish to argue the question at all. It is a mere question of law.

Mr. Travis—It is a mere question of law.

COUNTY COURTS.—NEW RULES OF PRACTICE.

THE Lord Chancellor has appointed the following Judges of the County Courts to prepare Rules of Practice and Proceeding under the 12th section of the Small Debts Amendment Act, 12 & 13 Vict. c. 101:—

Alfred Septimus Dowling, Esq., S.L., Judge of the Yorkshire County Courts.

Robert Brande, Esq., Manchester County Court.

James Espartero, Esq., Kent County Courts.

Charles Jas. Gile, Esq., Hampshire County Courts.

William Turner, Esq., Sussex County Courts.

We recommend our readers to suggest such practical amendments as in their experience may be deemed advisable, and we shall willingly and soon be in a position to discuss them in these pages.

The Rules are to be certified to the Lord Chancellor, and by his order to be printed, and then if the Judges of the Superior Courts of Common Law, including one of the Chiefs.

PARLIAMENTARY COSTS.

CHARGES OF PARLIAMENTARY AGENTS, ATTORNEYS, SOLICITORS, AND, OTHERS.

In pursuance of, "The House of Commons Costs Taxation Act, 1847."

I.—Attendants.

For every Attendance hereinafter specified, whenever the same shall be necessary, and shall be actually had (but not otherwise), Parliamentary Agents will be entitled to the charges set down in the First Column, and Solicitors to the charges set down in the Second Column of this List.

AT THE HOUSE OF COMMONS: At each of the following Proceedings in the House upon the Petition and Bill; viz:—		Parliamentary Agent.	Attorney or Solicitor.
Promoters:		£ s. d.	£ s. d.
Attending to get Petition for Bill presented and Petition referred to Standing Orders Committee, or Bill ordered; or other proceeding thereon		1 1 0	1 1 0
First Reading of the Bill		1 1 0	1 1 0
Second Reading*		1 1 0	1 1 0
Report		1 1 0	
Consideration of Report*		1 1 0	1 1 0
Third Reading*		1 1 0	1 1 0
Consideration of Lords' Amendments		1 1 0	1 1 0
[Note.—The above Charges will include the attendances upon members at the House, who are to present petitions, or to move any stage of the Bill in the House, and also upon Officers of the House in reference to matters connected with any stage of the Bill or other proceeding; except under special circumstances.			
All other special attendances in reference to other proceedings in the House may be charged according to the circumstances of each case, in conformity with such parts of this List as may be applicable thereto.]			
Attendances before the <i>Examiners of Petitions for Private Bills</i> :			
<i>Unopposed Cases:</i>			
To prove compliance with the Standing Orders in the case of a Petition for a Bill, and obtaining indorsement by Examiner		2 2 0	2 2 0
In Second Class Bills		2 2 0	3 3 0
If adjourned for further proofs, each subsequent attendance when the Examiner shall inquire into the same, or attending to apply for postponement or adjournment		1 1 0	1 1 0
To prove compliance with the Standing Orders in the case of Petitions for additional provision		1 1 0	1 1 0
<i>Opposed Cases:</i>			
For every day on which Memorials complaining of non-compliance with the Standing Orders are inquired into by the Examiner (according to circumstances)	{ from to 5 5 0		{ from to 5 5 0
For entering Appearances upon Memorials before the Examiner, and watching proceedings in case such Memorials are not called on, each day (according to circumstances)	{ from to 3 3 0		{ from to 3 3 0
[Note.—When an Agent or Solicitor appears and attends for two or more Memorials, complaining of non-compliance with the Standing Orders, on behalf of the same clients, he will be entitled to charge one day's attendance only in respect of the same, except under special circumstances.]			
For every day on which a Petition for a Bill is on the Examiner's Daily List, but is not called on		2 2 0	2 2 0
[Note.—When two or more Petitions for Bills being promoted or opposed by or on behalf of the same clients, are appointed for consideration by the same Examiner on the same day, but are not called on, the Agents and Solicitors of such clients respec-			

* When the Solicitor is also acting as Parliamentary Agent, he will be entitled to charge 2l. 2s. for his attendance at the House on the second reading, the consideration of the Report, and the third reading; but on other stages or proceedings, 1l. 1s. only, except under special circumstances.

	Parliamentary Agent.	Attorney or Solicitor.
	£ s. d.	£ s. d.
<p>thirty will not be entitled to such charge in respect of each Petition for a Bill so promoted or opposed, but may charge any sum not exceeding 14. 1s. for additional trouble (if any) in respect of each other Petition for a Bill on the same List; provided that in no case (except under special circumstances) shall a charge exceeding 5l. 5s. be made in respect of one such day's attendance on behalf of the same clients.]</p> <p>For every day on which Memorials complaining of non-compliance with the Standing Orders in the case of Petitions for additional provision are inquired into by the Examiner (according to circumstances).</p> <p>Other special Attendances before the Examiner in opposed cases (according to circumstances)</p>	<p>from 1 1 0 to 2 2 2</p> <p>from 1 1 0 to 2 2 0</p>	<p>from 1 1 0 to 2 2 0</p> <p>from 1 1 0 to 2 2 0</p>
<p>Attendances before Committees:</p> <p>Attending the Standing Orders Committee each day in which the case is on the List, and is heard, postponed or adjourned</p> <p>Attending the Committee of Selection when Committee appointed to meet on a certain day, or on other special and necessary occasions</p> <p><i>Committee on the Bill:</i></p> <p><i>Unopposed Bills:</i></p> <p>Attending when the Bill is considered by the Committee (according to the class of Bill, and other circumstances).</p> <p>Under special circumstances in Railway and other Bills</p> <p>Attending the Committee to apply for a Postponement or Adjournment</p> <p><i>Opposed Bills:</i></p> <p>Attending the Committee every day on which the Bill is considered by the Committee:—</p> <p>When the parties appear without Counsel (according to circumstances)</p> <p>When the parties appear by Counsel and the Preamble is considered by the Committee.</p> <p>When the Clauses of the Bill are considered by the Committee</p>	<p>2 2 0</p> <p>1 1 0</p> <p>from 2 2 0 to 3 3 0</p> <p>— — —</p> <p>1 1 0</p> <p>from 3 3 0 to 5 5 0</p> <p>2 2 0</p> <p>3 3 0</p>	<p>from 1 1 0 to 2 2 0</p> <p>from 1 1 0 to 2 2 0</p> <p>from 1 1 0 to 2 2 0</p> <p>from 3 3 0 to 5 5 0</p> <p>from 3 3 0 to 5 5 0</p> <p>from 3 3 0 to 5 5 0</p> <p>from 3 3 0 to 5 5 0</p> <p>from 3 3 0 to 5 5 0</p>
<p>[<i>Note.</i>—When an agent or Solicitor appears and attends for two or more Petitions against a Bill, on behalf of the same clients, he will be entitled to charge one day's attendance only in respect of the same, except under special circumstances.]</p> <p>Attending to watch Proceedings of a Committee on a Group of Bills, when the Bill in respect of which the Agent or Solicitor is concerned has not been postponed until a future day, but is not considered by the Committee, per day</p> <p>[<i>Note.</i>—When two or more Bills, being promoted or opposed by, or on behalf of the same clients, are appointed for consideration by the Committee on the same day, but are postponed or adjourned without being considered, or are not separately considered by the Committee, the Agents or Solicitors of such clients respectively will not be entitled to such charge in respect of each Bill, so promoted or opposed; but may charge any sum not exceeding 14. 1s. for additional trouble (if any) in respect of each other Bill so postponed or adjourned, or not separately considered; provided that in no case (except under special circumstances) shall a charge exceeding 5l. 5s. be made in respect of one such day's attendance upon the Committee on behalf of the same clients.]</p>	<p>1 1 0</p>	<p>1 1 0</p>

	Parliamentary Agent.	Solicitor or Solicitor.
<i>Other Attendances at the House, or elsewhere.—</i>		
Special attendances upon Mr. Speaker or the Chairman of the Committee of Ways and Means, in reference to any Bill.	£ s. d. 1 1 0	£ s. d. 1 1 0
Special attendances (not included in the Sessional Fee) upon Mr. Speaker's Secretary or Counsel, or other Officer of the House.	0 10 6	0 13 4
At Consultation with Counsel.	2 2 0	2 2 0
On Counsel, at Chambers, with Retainer: Brief, to fix Consultation and pay Fee; with and for Draft Bill; and other Attendances when Fees are paid to Counsel.	(When required to attend.)	0 10 0
Attending at the Private Bill Office to deposit the Petition for the Bill, together with the other Documents required to be deposited therewith, and registering the same in the General List of Petitions.	1 1 0	1 1 0
Attending to deposit other Documents required by the Standing Orders to be deposited (except Bills, Amendments, Breviates, &c., the deposit of which in certain cases, is included in the Sessional Fee). See II.	0 10 6	0 13 4
If at a distance, Clerk's time and expenses are to be charged instead of the preceding.		
Attending at the Private Bill Office to deposit Petitions in favour of or against any Private Bill, and registering the same; viz.	(If deposited by Agent.)	(If deposited by Solicitor.)
If one Petition, or less than three.	0 10 6	0 13 4
If three Petitions, and less than seven.	1 1 0	1 1 0
If seven Petitions, and less than twelve.	1 1 0	1 1 0
For any number exceeding twelve.	2 2 0	2 2 0

II.—Sessional or Solicitation Fee for Soliciting the Bill for the Promoters by the Parliamentary Agent.

When the Bill has received the Royal Assent [In case the Bill should not receive the Royal Assent, a Sessional Fee of Two Guineas and upwards may be charged according to the Class of Bill, and the progress made through its several stages.]

The Sessional Fee will include all Attendances not otherwise specially mentioned in this List at the following Offices of the House of Commons; viz.—

Chairman of the Committee of Ways and Means:—To deposit Bills, Clauses and Amendments, and afterwards to obtain the same; and all other formal attendances.

Mr. Speaker's Counsel:—To deposit Prints of Bills, and to obtain Breviates and return the same.

Mr. Speaker's Secretary:—All formal attendances to leave amended Bills and Clauses, and to obtain the same agreed to.

Private Bill Office:—To give Notices, To examine Register, and other Books, To deposit Prints of Bills, Amended Bills, and copies of proposed Amendments.

Fee Office:—To pay Fees, and all other attendances in reference thereto, and with copies of Bills when required.

Journal Office:—To order and obtain copies of Reports, Petitions and other Papers, except in the case of Opposed Bills, when 7s. 6d. may be charged for attending to deposit and afterwards to obtain same.

Committee Clerks' Office:—All ordinary attendances with reference to the progress of the Bill.

Ingrossing Office:—To deposit copies of Bills for ingrossment, and to receive the same when ingrossed.

Vote Office:—To deliver printed Breviates.

Doorkeepers:—To deliver Prints of Bills, &c.

Offices for the Sale of Parliamentary Papers:—To obtain printed Reports and other Papers required for use in the progress of the Bill.

The Sessional Fee will also cover all ordinary communications of the Agent with the Solicitor, with reference to the progress of the Bill through its various stages, when no professional advice or instruction is given.

When a Parliamentary Agent is employed, the Solicitor will not be entitled to the Sessional Fee, but may charge from two guineas to ten guineas, according to circumstances, in respect of his ordinary communications with such Agent, with reference to the progress of the Bill through its various stages, when no professional advice or instruction is given.

When neither Parliamentary Agent is employed, the Solicitor acting in that capacity will be entitled to the Sessional Fee.

In cases of opposition to Bills, no Sessional Fee is allowed. [To be concluded in the next No.]

CIRCUITS OF THE JUDGES.

Cambridge, J., will remain in Town.

MIDLAND.

Denman, L. C. J., and Parks, B.
 Tuesday, March 5, Northampton.
 Friday, March 8, Oakham.
 Saturday, March 9, Lincoln and City.
 Friday, March 15, Nottingham and Town.
 Wednesday, March 20, Derby.
 Monday, March 25, Leicester and Borough.
 Thursday, March 28, Coventry.
 Saturday, March 30, Warwick.

HOME.

Wilde, L. C. J., and Maule, J.
 Tuesday, Feb. 26, Hertford.
 Monday, March 4, Chelmsford.
 Monday, March 11, Lewes.
 Monday, March 18, Maidstone.
 Wednesday, March 27, Kingston.

NORFOLK.

Pollock, L. C. B., and Wightman, J.
 Monday, March 11, Aylesbury.
 Thursday, March 14, Bedford.
 Monday, March 18, Huntingdon.
 Wednesday, March 20, Cambridge.
 Tuesday, March 26, Bury St. Edmunds.
 Tuesday, April 2, Norwich and City.

NORTHERN.

Alderson, B., and Rolfe, B.
 Saturday, Feb. 16, Lancaster.
 Wednesday, Feb. 20, Appleby.
 Friday, Feb. 22, Carlisle.
 Wednesday, Feb. 27, Newcastle and Town.
 Saturday, March 2, Durham.
 Thursday, March 7, York and City.
 Thursday, March 21, Liverpool.

OXFORD.

Paterson, J., and Platt, B.
 Wednesday, March 27, Abingdon.
 Saturday, March 2, Oxford.
 Wednesday, March 6, Worcester and City.
 Tuesday, March 12, Stafford.
 Wednesday, March 20, Shrewsbury.
 Saturday, March 23, Hereford.
 Wednesday, March 27, Monmouth.
 Saturday, March 30, Gloucester and City.

SOUTH WALES.

Cresswell, J.
 Tuesday, March 12, Welchpool.
 Thursday, March 14, Bala.
 Monday, March 18, Carnarvon.
 Wednesday, March 20, Beaumaris.

Saturday, March 23, Ruthin.
 Wednesday, March 27, Mold.
 Saturday, March 30, Chester.

SOUTH WALES.

Williams, J.

Saturday, March 2, Swansea.
 Saturday, March 9, Haverfordwest & Town.
 Thursday, March 14, Cardigan.
 Monday, March 18, Carmarthen.
 Friday, March 22, Brecon.
 Wednesday, March 27, Presteign.
 Saturday, March 30, Chester.

WESTERN.

Erle and Talfourd, JJ.

Thursday, Feb. 28, Winchester.
 Thursday, March 7, Salisbury.
 Wednesday, March 13, Dorchester.
 Saturday, March 19, Exeter and City.
 Saturday, March 23, Bodmin.
 Saturday, March 30, Taunton.

NOTES OF THE WEEK.

CONTROVERTED ELECTIONS COMMITTEE.

The Speaker has appointed the following Members to serve on the General Committee of Elections for 1850:

The Right Hon. *For Maule*, Member for the Borough of Perth.

The Right Hon. *Sir George Clerk*, Member for the Town and Port of Dover.

John Wilson Patten, Esq., Member for the Northern Division of the County of Lancaster.

Sir Robert Alexander Ferguson, Member for the City of Londonderry.

Thomas Thornely, Esq., Member for the Borough of Wolverhampton.

Sir John Buller Yarde Buller, Member for the Southern Division of the County of Devon.

POSTPONEMENT OF MR. BARBER'S CASE.

Late on the last day of Term, Mr. *Seigneur Wilkins* said, "If your lordships please in the case of *Barber*, my learned friend *Sir Frederic Thesiger* has very kindly done every thing that could be expected under the circumstances, but his engagements will not permit him to attend on the days mentioned by your lordships, and I am afraid it will be hopeless on my part to expect that the case should be brought on before next Term, but I must most respectfully request your lordships, who have heard thus much of the case, will condescend to attend and listen to the remaining portion of it."

Mr. Justice *Paterson* said, "Undoubtedly, we will take care to do so."

RECENT DECISIONS OF THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Wheat v. O'Brien. A bill was filed by the plaintiff against the defendant, to enforce the payment of a sum of money, which the defendant had borrowed from the plaintiff, and which the defendant had refused to pay. The bill was filed in the Court of Chancery, and the defendant appeared and defended the bill. The bill was proved, and the court found in favor of the plaintiff, and ordered the defendant to pay the sum of money, with interest. The defendant appealed from the judgment, and the case was brought on for argument before the Court of Exchequer. The court of Exchequer affirmed the judgment of the Court of Chancery, and ordered the defendant to pay the sum of money, with interest.

THIS was an appeal from the Vice-Chancellor of England, who had allowed the costs as between solicitor and client, of Mr. Watson, a solicitor, and one of the trustees of the testator, Mr. Piper, and who had acted professionally in two suits, in one of which he and his *cestui que trustent* were defendants, and in the other plaintiffs; (38 L. O. 198.)

J. Parker and Wright for the appellants; *Bethell and Siddons* for the respondent.

The Lord Chancellor, after taking time to consider, said; that there was a reference made to a general order, under which the taxing Master conceived he was justified in exercising his discretion on the order of taxation of the costs of a solicitor acting as trustee, and to strike out all the items except the moneys out of pocket. These suits had existed for many years, and under a former decree in 1839, full costs were taxed without any regard to the solicitor being a trustee, and a subsequent decree had directed taxation of the further costs. Whether an error was committed on the former decree could not now be determined. It appeared from the cases of *New v. Jones*, 9 Jarm. Conveyancing, by Sweet, p. 732; *Moore v. Prowd*, 3 Myl. & Cr. 45; *Clarmichael v. Wilson*, 2 Molloy, 537; *Wilson v. Carmichael*, 2 Dow & Cl. 51; *Bainbrigg v. Blair*, 8 Beav. 588; and *Fraser v. Palmer*; 4 Y. & C., Eq. Exch., 515; that where a solicitor being a trustee is a party and acts as a solicitor for himself, he is not entitled to any costs for his services as a solicitor, but that where he is a defendant, and acts for others as co-defendants, the rule does not apply, as he acts in his character of solicitor for other parties and not as trustee. In *Fraser v. Palmer*, (ubi supra,) there were three suits, and Harmer, the trustee for Miss Palmer, was party defendant in two, and acted as solicitor in all of them. *Alderson*, B., said, that the estate of a *cestui que trust* is to be protected by the unbiassed judgment of the trustee, and allowed Harmer his costs as between solicitor and client in the suit only in which he was not a party. The distinction, however, is not clearly laid down in the language ascribed to the learned baron, since Harmer acted in that suit for Mrs. and Miss Palmer and not for himself, and was therefore held entitled to his costs. A dictum had been relied on of Lord Chancellor *Manners* in Molloy, but upon reference to the report of the same case in the House of Lords in Dow and Clark, it appeared that the question of the trustee's costs was reserved. The Master therefore should have allowed the costs incurred by Mr. Watson for the *cestui que trustent*, and the other persons who had retained him as their solicitor, but he had exercised a proper discretion in refusing to tax any costs incurred by Mr. Watson as trustee in himself in his character of solicitor, and the matter would be referred back to the Master to review his taxation.

On the 22nd, the Lord Chancellor, upon *Bethell* for the respondent asking the costs of appeal, said, that as the petition of appeal

sought to discharge or vary the order of the Court below and had failed, although the rule of taxation was established on different grounds, the respondent was entitled to the costs of the appeal.

Beale v. Simons. Jan. 11, 1860.

CREDITOR'S SUIT.—TRANSFER OF CONDUCT THEREOF.

On appeal from the Vice-Chancellor of England, an order was made to change the conduct of a creditor's suit where the assets exceeded the debts, and no such debts had been paid off within a period of 10 years since the institution of the suit.

THIS was an appeal from the Vice-Chancellor of England, who had granted an order in a creditor's suit, transferring the conduct of the cause to another creditor, and changing the Master to whom the reference was made. It appeared that the suit was instituted in 1840, for the administration of the debtor's estate, the personality of which amounted to 16,000*l.*, and the debts to 13,000*l.*, but no payments had been made, and that the order of reference was made to Master Horne, who took proof of the debts and accounts of the assets; but was subsequently, in consequence of domestic affliction, unable to attend at chambers.

Rolt and Whitbread, for the appellant, contended that such a transfer would only be made under special circumstances. *Powell v. Wallworth*, 2 Madd. 183; *Sims v. Ridge*, 3 Meriv. 458.

Stuart and Shapter for the respondent.

The Lord Chancellor said, the fact that the debts had not been paid after the lapse of 10 years from the institution of the suit, although the assets were ample, was sufficient to induce the Court to order the transfer of the conduct of the suit to another creditor. Inasmuch, however, as the cause for the change of Master has ceased, the order of the Court below would be varied by striking out that portion. The order had at the time been a proper one, and the appeal would therefore be dismissed with costs.

Ex-parte E. Mansfield, in re Universal Salvage Company. Jan. 11, 12, 14, 1860.

JOINT-STOCK COMPANIES' WINDING-UP ACT.—CONTRIBUTORY.

Held, affirming the decisions of Vice-Chancellor Knight Bruce, that a party who had received an allotment of 20 shares in a joint-stock company, and paid the deposit thereon, was a contributory within the 11 & 12 Vict. c. 45, although he had not paid a call afterwards made, nor taken any part in the subsequent proceedings.

THIS was an appeal from the Vice-Chancellor Knight Bruce, reversing the decision of the Master, charged with the winding up of the above company under the 11 & 12 Vict. c. 45, and holding that Lord Mansfield was a contributory. The company was formed in 1845, with a proposed capital of 100,000*l.* in 4,000 shares of 25*l.*, and in June 20 shares were

admitted to Lord Mansfield, who paid the deposit thereon of 5*l.* each share, but took no further part in the proceedings, nor signed the partnership deed, nor paid a call made in July, 1846. It appeared that only 50,000*l.* was raised. The order for dissolution and winding up having been made, the name of Lord Mansfield was struck out from the list of contributories by the Master, whereupon the manager appealed to the Vice-Chancellor, who reversed the Master's decision, and this appeal was presented.

Malins and Glasse, for the appellant, cited *Fox v. Clifton*, 6 Bing. 776; 6 M. & P. 676; *Pitchford v. Davis*, 5 M. & W. 2; *Walstab v. Spottiswoode*, 15 M. & W. 501; 4 Rail. Ca. 321; *Wentner v. Sharp*, 4 Rail. Ca. 542; *Nockells v. Crosby*, 3 B. & C. 814; 5 D. & R. 751; *Ex parte Sadler*, 15 Ves. 52; *London and Brighton Rail. Co. v. Wilson*, 1 Rail. Ca. 530; *Jarrett v. Kennedy*, 6 C. B. 319; *Prendergast v. Turton*, 1 Y. & C. 98; *Bell v. Lord Mexborough*, 5 Rail. Ca. 149; *Clements v. Todd*, 5 Rail. Ca. 132.

J. Russell and Prendergast for the official manager.

The Lord Chancellor said, the appellant, by receiving and acknowledging the scrip certificates and paying the deposits thereon, was entitled to share in the profits, and was therefore a contributory within the 11 & 12 Vict. c. 45. The appeal would be dismissed with the costs here and of the Court below.

Jan. 30.—*Cowell v. Watts*—Appeal from the Vice-Chancellor Knight Bruce dismissed with costs.

— 30. — *Hawkins v. Jackson*—Appeal allowed from the Vice-Chancellor of England.

— 31. — *Andrew v. Andrew*—Appeal from the Vice-Chancellor Knight Bruce dismissed.

Feb. 1.—*Marks v. Solomons*—Appeal allowed from the Vice-Chancellor of England.

— 4. — *Grand Junction Canal Company v. Dimes*—Part heard.

— 1, 5. — *Bagshaw v. Eastern Union Railway Company*—Cur. ad. vult.

— 5. — *Loader v. Clarke*—Appeal dismissed from the Vice-Chancellor Wigram.

— 5. — *Cross v. Sprigg*—Stand over.

— 5. — *Sanderson v. Cockermouth and Workington Railway Company*—Part heard.

Master of the Rolls.

Wilson v. Eden and others. Jan. 14, 15, 1850.

ISSUE AT LAW.—NEW FACTS.—FURTHER DIRECTIONS.

A petition to introduce new facts in a case for the opinion of a court of law, after further directions, was dismissed with costs.

By the decree made in this cause in July, 1846, inquiries were directed as to the leasehold estates the late Sir John Eden, Bart., died possessed of, and the Master made his report in July, 1847, stating the circumstances which appeared, material for the case directed to a court of law on the question, whether the testator intended to pass the leaseholds under a

devises applicable in strictness to freeholds only. The Master refused to insert therein entries and references from a map of the estates and books of rental produced before him, and no exceptions were taken on further directions, but the case was directed to the Court of Exchequer. This petition was then presented by one of the defendants, Sir W. Eden, Bart., praying that the map and the books of rental might be introduced into the case.

Walpole, Malins, and Dumourys, in support of the petition, which was opposed by *Turner, Elmsley, Fisher, Lloyd and Bouspill*.

The Master of the Rolls said, that new facts could not be introduced, into a case after further directions, and dismissed the petition with costs.

Jan. 20.—*Thornber v. Sheard*—Part heard...

— 31. — *Alfrey v. Alfrey*—Motion dismissed, with costs, to take Master's certificate, allowing certain interrogatories, off the file.

— 31. — *Robertson v. Skelton*—Plaintiff held only entitled to interest on purchase money from the day on which the Master's report was confirmed.

— 31. — *Cocks v. Purday*—Order, on payment of costs, to vary former undertaking.

Vice-Chancellor of England.

In re London Bridge Approaches' Act. Jan. 18, 1850.

LONDON BRIDGE APPROACHES' ACT.—COSTS OF INVESTMENT OF PURCHASE MONEY.

Held, that under the *London Bridge Approaches' Act* the Corporation of London were liable to the costs of investment of the whole of the money paid into Court for the purchase of land taken under the act, although they had already paid the costs of investing portions thereof, where no fraud or oppression was made out.

THIS was a petition for the investment of 400*l.*; which had been paid into Court by the Corporation of London under the above act, with costs.

Back, in support of the petition, which was opposed by *Standall*; so far as related to the payment of costs, on the ground that the words "all reasonable expenses from time to time incurred under the act," did not extend to cases where several investments had been made in small sums; and that a limit ought to be put on the costs.

The Court said, that unless something oppressive or mischievous could be made out, the corporation were liable under the act of parliament to pay all expenses incurred by taking land for the purposes of the act.

Jan. 31.—*Shrewsbury and Birmingham Junction Railway Company v. London and North Western and Shropshire Union Railway and Canal Company*—Demurrer to bill allowed.

Feb. 1.—*Stevens v. Wills*—Injunction to restrain infringement of copyright.

0 Sir P. Theobald moved on the 14th Jan. 1701
with his own party, directed to the keeper of
the Queen's prison, to bring up William Dimes
intoxicated (therein under an order of commit-
ment by the Lord Chancellor, on the ground
that his lordship being a shareholder in the
Grand Junction Canal Company, he had sold
to him an order for commitment); ending 2 Str.
1173; Rolle's Ab. 1173, 1174, 1175, 1176, 1177,
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1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809,
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1818, 1819, 1820, 1821,

dated 10 Dec. 1849. The order was then set out and was headed by the Vice-Chancellor of England with the letters "C. C." signed underneath.

Sir F. Thesiger, Mr. T. S. Daniell, and Smythes moved for delay to enable the prisoner to file affidavits, citing *Ex parte Clarke*, 2 Q. B. 634; *In re Sheriffs of Middlesex*, 11 A. & E. 296; *In re Carus Wilson*, 7 Q. B. 1006; *Christie v. Unwins*, 11 A. & E. 373; *Ex parte Beeching*, 4 B. & C. 136.

The Attorney-General, with him Sir F. Kelly, Compton, and Busk, contended that even if the Court had jurisdiction, affidavits were inadmissible.

The Court, without hearing Sir F. Kelly, on the ground that only one counsel could be heard on either side on a preliminary objection, said, that as upon the face of the return the order of commitment appeared to be made by the Vice-Chancellor, who had clearly jurisdiction to determine whether or not the breach of the injunction was a contempt, and to make an order of commitment, this Court could not review that decision, and no affidavits could be admitted on this return. The prisoner was therefore remanded.

Jan. 30.—*Regina v. Crompton and another*—Rule absolute for criminal information for libel with costs, but no further proceedings to be taken.

—*Regina v. Noddin*—Rule absolute for criminal information for libel.

—*Regina (Barnes Railway) v. South Devon Railway Company*—Rule absolute for mandamus for company to take up award.

—*Regina v. Williams and another*—Rule absolute for criminal information.

—*In re Wicks, Heyford and Waterford Railway Company*—Rule absolute for mandamus on directors to allow inspection of register of shareholders.

—*Regina v. Hayward*—Rule absolute for quo warranto to town councillor of Cambridge.

—*Regina v. Butcher and others*—Rule absolute for mandamus on justices to issue warrants for distress, for penalties under Local Statute.

—*Not in Henderson*—Rule absolute to require payment of costs.

—*Regina v. Lord*—Rule absolute for mandamus on Lord to deliver the Prisoners.

—*Regina v. Howard*—Rule for new trial discharged.

—*Thompson v. Ingram*—Cur. ad. vult.

—*Thompson v. Ingram*—Cur. ad. vult.

—*Thompson v. Ingram*—Cur. ad. vult.

—*Thompson v. Ingram*—Cur. ad. vult.

—*Thompson v. Ingram*—Cur. ad. vult.

—*Thompson v. Ingram*—Cur. ad. vult.

—*Thompson v. Ingram*—Cur. ad. vult.

polluting a watercourse with the drainage water of his mill, was discharged from the county of Cornwall to Devon, on the ground that a fair trial could not be had in the former county.

This was a motion to change the venue from the county of Cornwall to that of Somerset or Devon, in this action, which was brought by the plaintiff, a landowner, to recover damages for injuries sustained by defendant, a miner, having polluted a watercourse by draining his mine into the stream, and thereby seriously injuring the plaintiff's land through which it ran.

Cockburn, in support, urged that owing to the extent of mining property in Cornwall, it was impossible to obtain an impartial trial in the county, and one jury had already been discharged without agreeing to a verdict.

The Court directed the venue to be changed to the county of Devon.

Jan. 30.—*Regina v. Lotman*—Rule absolute for criminal information for libel.

—*Regina v. Smith*—Rule on prosecutors to give defendants particulars of charges in indictment.

—*In re Smith*—Rule discharged with costs on attorney to answer matters of affidavits.

—*In re Cabbell*—Rule refused to quash return to habeas corpus.

—*In re Will and another*—Rule on attorneys to pay moneys referred to the Master to take accounts.

—*In re Radwick*—Rule absolute for Master to review his taxation.

Common Pleas

Acraman and others v. Morris, Nov. 22, 1849.

TROVER AND CONVERSION.

DEBT AND RESCUE—DELIVERY.

Held, that where there remain acts to be done by the seller of goods before the buyer was entitled to have the same, there was no passing of possession from the one to the other, and the goods having been taken possession of and converted by the buyer, a trover might be maintained, and the seller to recover for the value thereof.

This was an action in trover, by the assignees of Swift, a bankrupt, to recover the value of one barrel which the bankrupt had purchased in Huddock Pore, Water, in 1847, against the defendant Morris, who had contracted to buy a portion thereof paying more than the purchase money, and had marked and measured off the same with the title of the purchase. Swift engaged to deliver it and deliver it at Morris's warehouse at Okehampton, but before such delivery he became a bankrupt, and Morris then laid down and carried away the barrel, and the assignees claimed it from the plaintiff, with leave to the defendant to recover it either for him if the Court were of opinion that Morris was not entitled to it.

Referred in support.

Referred in support.

Referred in support.

pass had been committed, *nisi* had been obtained accordingly.

Butt, Q. C., Kinglake, S. L., and M. Smith, showed cause; Crookburn, Q. C., and Barstow in support.

The Court said, that as there remained acts to be done by the seller before the buyer was to have the possession of the timber, the property therein did not pass to the defendant until they were done. The defendant had, however, taken possession before he had a right so to do, and as the seller's right passed to his assignees, the plaintiffs were entitled to recover for the conversion and trespass, and the rule must be discharged.

Moss v. Smith. Jan. 17, 1850.

SHIP.—POLICY OF INSURANCE.—TOTAL AND PARTIAL LOSS.—CARGO.

Held, that in order to entitle an owner of a vessel to recover as for a total loss of the ship and cargo, it must be shown that the cost of repairing would exceed the value of the ship, and that she could not be repaired at a less expense so as to be able to bring home part of the freight.

A RULE *nisi* had been obtained for a new trial, on the ground of misdirection, and that the verdict was against evidence. It appeared that a vessel called the *Alfred*, sailed from Valparaiso on the 12th September, 1848, but having sustained damage put back, and returned on October 19th, when the captain applied to the British Consul to appoint parties to survey the ship. The surveyors appointed caused the ship to be unloaded, and estimated the expenses of repairs at about 3,800*l.*, to raise which sum on bottomry would have caused a further expense of 1,500*l.* The vessel was therefore abandoned, and the plaintiff brought this action to recover as for a total loss against the underwriters, namely, in the 1st count 12,000*l.* for the ship, and in the 2nd 4,000*l.* for the cargo. The ship was worth 8,000*l.* It was, however, proved on the trial, that the ship had been repaired for 244*l.*, and had brought a cargo of 500 tons to Hamburg. *Wilde, L. C. J.*, directed the jury, that to entitle the plaintiff to recover as for a total loss of the vessel, it was necessary that the cost of repairs should exceed the value of the ship in England; and of the cargo, it was necessary that she should be unable to bring home any part of the freight. A verdict having been found for the defendants on both counts, this rule was obtained.

Martin, Q. C., Byles, S. L., and Barstow, in support; Attorney-General, Sir F. Thesiger, and J. Wilde, contra, were not called on.

The Court said, that as the ship might have been repaired at a less cost than the value of the ship, and it was not so damaged as to be unable to bring home a part of the freight, the direction of the judge was right, and the rule must be discharged.

Jan. 30.—In re Stead—Petition dismissed with costs, to transfer prisoner from the first to the third class in the Queen's Prison.

Court of Exchequer.

Vallee v. Dumargue. Jan. 14, 1850.

ASSUMPSIT.—FOREIGN JUDGMENT.—IRREGULARITY.—PLEADING.

In an action of assumpsit on a French judgment, evidence was held properly admitted under a plea of non assumpsit, to prove that the foreign judgment was irregular and void on the ground of insufficiency in the service of notice or process according to the law of France.

THIS was a motion for a new trial on the ground of the improper reception of evidence in an action of *assumpsit* on a judgment recovered against the defendant in France. At the trial the defendant, under a plea of *non assumpsit*, adduced evidence to show that he had not been served with any notice or process in accordance with the law of France, and that the judgment was therefore bad. The verdict having been found for the defendant,

The *Attorney-General*, in support of the motion, contended that the defendant should have pleaded specially in order to avail himself of the irregularity in the process. It appeared on the face of the declaration that the defendant resided in London, and had not appeared in the French Court, though duly called, and judgments of foreign Courts would be recognized by the English Courts as binding, unless they appeared *prima facie* to be repugnant to natural justice.

The Court held that the evidence of the irregularity in the judgment according to the law of France was properly admitted under the plea of *non assumpsit*, and refused the rule.

Jan. 31.—Russell and wife v. Gibbs—Rule discharged with costs for judgment as in case of nonsuit.

Court of Criminal Appeals.

Feb. 1.—Regina v. Christopher and others—Conviction quashed, and prisoners discharged.

— 1.—*Regina v. Williams*—Prisoner discharged.

— 1.—*Regina v. Jones*—Case sent back to Middlesex Sessions on account of defective statement.

Court of Exchequer Chamber.

Feb. 2.—Guthrie v. Tuck—Rule discharged without costs to quash a writ of error issued on the common law side of the Court of Chancery.

— 4, 5.—*Governors of the Poor of Bristol v. Reginald*—Judgment of the Court of Queen's Bench affirmed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see Jurisdiction of County Courts, p. 87.

Poor Law and Magistrates' Cases, 108.

Courts of Common Law:

Construction of Statutes, 128, 146.

Principles and Jurisdiction, 165.

Appeals from Revising Barristers, p. 189.

Law of Attorneys and Solicitors, p. 229.

Law of Property and Conveyancing, p. 246.]

EVIDENCE.

ADMISSION OF CO-DEFENDANT.

Production of Answer.—Two defendants, A. and B., answered separately. A. admitted the possession of certain documents, but alleging that he had acted as solicitor of B., insisted they were privileged from production. B., by a separate answer, denied that he had employed A. as his solicitor. On a motion to produce, notice of which was given to both defendants, *Held*, that the answer of B. could not be read in aid of the motion against the answer of A. *Blenkinsopp v. Blenkinsopp*, 11 Beav. 134.

BANKRUPTS, EXAMINATION OF.

The Court will not make an order, permitting a plaintiff in an original bill, who has subsequently become bankrupt or insolvent, to be examined as a witness in the cause for the assignees of the estate, who are prosecuting the suit by supplemental bill. *Fisher v. Fisher*, 6 Hare, 628.

CHARITY TRUST.

Quere, whether a deed vesting lands in trustees for a charitable use, not enrolled under the statute 9 G. 2, c. 36, and therefore within that act "null and void," is admissible in evidence, for the purpose of showing upon what trusts the lands are held, the party having the legal estate admitting that he is a trustee, and claiming no beneficial interest. *Attorney-General v. Ward*, 6 Hare, 482.

COMMISSION TO EXAMINE WITNESSES ABROAD.

Upon an application to the Court to examine witnesses out of the jurisdiction, it is not a general rule to require the names of the witnesses to be stated, or the affidavit to be made by the party or his solicitor. *McHardy v. Hildescock*, 11 Beav. 93.

COMPETENCY.

A suit was instituted by A. and B., two of the guardians of the poor of a parish, on behalf of themselves and the other guardians, to enforce payment of money for the benefit of the parish.

Held, that S. was a competent witness for the plaintiff, notwithstanding he was one of the guardians when the suit was instituted, and was interested in the result as a parishioner when he gave his evidence. *Scott v. Russell*, *Pearson v. Scott*, 15 Sim. 640.

EXAMINATION BEFORE COMMISSIONERS.

Notice of names of witnesses.—Where the plaintiff's solicitor knew the names, &c. of the

witnesses who were examined before a Commissioner and was at the time where the examination took place, but had not received any notice respecting them from the other side, an application to suppress the depositions after publication, no objection being made at the time, was refused, with costs.

Quere, whether it is necessary, where witnesses are to be examined before a Commissioner, to give notice to the other side, of the names, &c. of the proposed witnesses? *Smith v. Pincombe*, 1 H. & T. 250.

EXAMINATION OF CO-DEFENDANT.

Service of order.—An order obtained by a defendant for the examination of a co-defendant as a witness, need not be served on the plaintiff. *Smith v. Pincombe*, 1 H. & T. 250.

LETTERS OF ADMINISTRATION.

An avowment in the bill, that the defendant had obtained letters of administration of the estate, and was the legal personal representative of the author of the trust, is sufficiently proved by the production of such letters of administration, notwithstanding they appear to have been granted on a date subsequent to the institution of the suit. *Bateman v. Margerison*, 6 Hare, 496.

LOST DEEDS.

Evidence of the loss of a deed, and of its contents, though not strictly formal, held to be sufficient. *Green v. Bailey*, 15 Sim. 542.

MASTER'S OFFICE.

On a reference to the Master under a decree, all the evidence referred to in the decree is before the Master. Therefore, a party who objects to the draft of the Master's report, on the ground that it is not warranted by the evidence, is not bound to produce office copies of the depositions; but he ought, previously, to notify to the Master what parts of the evidence he intends to rely upon. *Wilson v. Wilson*, 15 Sim. 487.

PARTIES, EXAMINATION OF.

1. **Trial at law.**—After an issue had been directed, (upon examination of the Master's report of debts in a creditor's suit), to try the consideration of a bond, the Court refused the motion of the plaintiff, the obligee in the bond, that he might be ordered to be examined and cross-examined by the respective parties, on the trial of the issue. *Hepworth v. Heslop*, 6 Hare, 622.

2. **Quere**, whether, generally, any of the parties, not being a merely formal party can be examined as a witness on the trial of an issue, directed at the hearing of the cause. *Hepworth v. Heslop*, 6 Hare, 622.

3. **Trial.**—**Re-hearing.**—**Quere**, whether the Court will, after an issue has been directed, order a party to be examined as a witness on the trial of the issue, without re-hearing the matter in which the order directing the issue was made? *Hepworth v. Heslop*, 6 Hare, 622.

See *Bankrupts' Examination*.

PRIVILEGE OF SOLICITOR.

Held, that it is not necessary to serve other parties in the cause with a notice of mo-

tion that a witness be ordered to attend and be examined, though the reason assigned by the witness for his refusal to be examined was, that he was professionally concerned as solicitor for such other parties. *Wisden v. Wisden*, 6 Hare, 549.

See *Solicitor*.

PRODUCTION OF DOCUMENTS.

See *Admission of Co-defendant*.

RECITALS IN DEED.

A deed, dated the 2nd of April, 1813, made between a mother and her two illegitimate children, recited, that, by a prior deed of the 28th of Nov. 1804, a trust fund had been appointed by the mother to one of such children, subject to a power of revocation, which was thereby expressed to be exercised, as to one moiety, in favour of the other child. The recited deed of the 28th of November, 1804, was not produced, and no evidence of it (beyond such recital) was given. The deed of the 2nd of April, 1813, was in another suit declared not to be a valid appointment, being in favour of persons whom the Court held not to be objects of the power reserved in the recited deed of the 28th of November, 1804; and in a suit by other persons claiming under legitimate children, and appointees of the same mother by an instrument later in date than that of April, 1813, the Court decreed the transfer of the fund to the parties representing such legitimate children, and refused to direct any inquiry as to the recited appointment of the 28th of November, 1804.

Quere, as to the effect which would have been given to the recital of the deed of the 28th of November, 1804, if the title of the

plaintiff in the last suit had been founded upon, or had been derived under or through, the deed of the 2nd of April, 1813, which recited that of the 28th of November, 1804. *Bell v. Alexander*, 6 Hare, 543.

SERVICE OF WITNESS.

Held, that a witness who attended to be examined, in pursuance of a subpoena, cannot then refuse to be examined on the ground of irregularity in the service of the subpoena. *Wisden v. Wisden*, 6 Hare, 540.

SOLICITOR.

The solicitor of the plaintiffs in a cause was served with a subpoena to attend and be examined before Commissioners as a witness for the defendants, and he thereupon attended and delivered to the Commissioners a written refusal to be examined, on the ground of his being professionally employed by the plaintiffs: *Held*, that such document was not properly returned by the Commissioners, and ought not to have been set down as a demurrer. *Wisden v. Wisden*, 6 Hare, 549.

See *Privilege*.

TRUST.

See *Charity*.

WITNESSES' EXPENSES.

A witness, who had attended before the Examiner, but had refused to be examined unless he were paid the expenses of some former attendances, ordered, upon motion, to attend and be examined, and to pay the costs of the motion. *Gawnt v. Johnson*, 6 Hare, 551.

WITNESSES ABROAD.

See *Commission to Examine*.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

AT LINCOLN'S INN.

Lord Chancellor.

Sittings after Hilary Term, 1850.

Thursday . Feb. 7	{ The 1st Seal—Appeal Motions and Appeals.
Friday 8	{ (Petition-day), unopposed Petitions and Appeals.
Saturday 9	
Monday 11	
Tuesday 12	{ Appeals.
Wednesday . . . 13	
Thursday 14	
Friday 15	{ (Petition-day) unopposed Petitions and Appeals.
Saturday 16	
Monday 18	
Tuesday 19	{ Appeals.
Wednesday . . . 20	
Thursday 21	{ The 2nd Seal—Appeal Motions and Appeals.
Friday 22	{ (Petition-day) unopposed Petitions and Appeals.

Saturday 23	
Monday 25	
Tuesday 26	{ Appeals.
Wednesday . . . 27	
Thursday 28	
Friday . March 1	{ (Petition-day) unopposed Petitions and Appeals.
Saturday 2	
Monday 4	
Tuesday 5	{ Appeals.
Wednesday . . . 6	
Thursday 7	{ The 3rd Seal—Appeal Motions and Appeals.
Friday 8	{ (Petition-day) unopposed Petitions and Appeals.
Saturday 9	
Monday 11	
Tuesday 12	{ Appeals.
Wednesday . . . 13	
Thursday 14	
Friday 15	{ (Petition-day) unopposed Petitions and Appeals.
Saturday 16	
Monday 18	
Tuesday 19	{ Appeals.
Wednesday . . . 20	
Thursday 21	

Friday . . . 22 Unopposed Petitions and Appeals.
 Saturday . . . 23 The 1st Seal—Appeal Motions and Appeals.
 Monday . . . 25 General Petition-day.

N. B.—The days his Lordship hears appeals in the House of Lords excepted.

Master of the Rolls,

AT THE ROLLS.

Thursday . . Feb. 7 Motions.
 Friday . . . 8 Pleas, Demurrers, Causes,
 Saturday . . . 9 Further Directions, and Exceptions.

AT THE JUDICIAL COMMITTEE.

Monday . . . Feb. 11
 Tuesday . . . 12
 Wednesday . . 13
 Thursday . . . 14
 Friday . . . 15

AT THE ROLLS.

Saturday . . . 16 Pleas, Demurrers, Causes,
 Further Directions, and Exceptions.

AT THE JUDICIAL COMMITTEE.

Monday . . . 18
 Tuesday . . . 19
 Wednesday . . 20

AT THE ROLLS.

Thursday . . . 21 Motions.
 Friday . . . 22
 Saturday . . . 23

Monday . . . 25
 Tuesday . . . 26
 Wednesday . . 27 Pleas, Demurrers, Causes,
 Thursday . . . 28 Further Directions, and Exceptions.

THE COURTS.

Saturday . . . 2
 Monday . . . 4
 Tuesday . . . 5
 Wednesday . . 6

Thursday . . . 7 Motions.

Friday . . . 8

Saturday . . . 9

Monday . . . 11

Tuesday . . . 12

Wednesday . . 13

Thursday . . . 14 Pleas, Demurrers, Causes,

Friday . . . 15 Further Directions, and

Saturday . . . 16 Exceptions.

Monday . . . 18

Tuesday . . . 19

Wednesday . . 20

Thursday . . . 21

Friday . . . 22

Saturday . . . 23

Monday . . . 25 Petitions in General Paper.

Such days as his Lordship may be engaged at the Judicial Committee excepted, of which (if any) due notice will be given.

Short Causes, Consent Causes, and Consent

Petitions, every Saturday at the sitting of the

Notice—Consent Petitions must be presented, and Copies left with the Secretary, on or before the Thursday preceding the Saturday on which it is intended they should be heard.

Vice-Chancellor of England.

Thursday Feb. 7 The 1st Seal—Motions.

Friday . . . 8 (Petition-day.) Petitions (unopposed first.) Short Causes and Causes.

Saturday . . . 9

Monday . . . 10 Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Tuesday . . . 11

Wednesday . . 12

Thursday . . . 13

Friday . . . 14

(Petition-day.) Petitions, (unopposed first.) Short Causes, and Causes.

Saturday . . . 15

Monday . . . 16 Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Tuesday . . . 17

Wednesday . . 18

Thursday . . . 19

Friday . . . 20

The 2d Seal—Motions.

(Petition-day.) Petitions, (unopposed first.) Short Causes and Causes.

Saturday . . . 21

Monday . . . 22

Tuesday . . . 23

Wednesday . . 24

Thursday . . . 25

(Petition-day.) Petitions, (unopposed first.) Short Causes and Causes.

Friday . . . 26

Saturday . . . 27

Monday . . . 28

Tuesday . . . 29

Wednesday . . 30

Thursday . . . 31

Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday . . . 1

Saturday . . . 2

Monday . . . 3

Tuesday . . . 4

Wednesday . . 5

Thursday . . . 6

Friday . . . 7

The 3rd Seal—Motions.

(Petition-day.) Petitions, (unopposed first.) Short Causes and Causes.

Saturday . . . 8

Monday . . . 9

Tuesday . . . 10

Wednesday . . 11

Thursday . . . 12

Friday . . . 13

Saturday . . . 14

Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Friday . . . 15

Saturday . . . 16

Monday . . . 17

Tuesday . . . 18

Wednesday . . 19

Thursday . . . 20

Friday . . . 21

Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Saturday . . . 22

Monday . . . 23

Tuesday . . . 24

Wednesday . . 25

Vice-Chancellor Knight Bruce.

Thursday Feb. 7 The 1st Seal—Motions.

Friday . . . 8 (Petition-day.) Petitions and Causes.

Saturday . . . 9

Monday . . . 10

Tuesday . . . 11

Wednesday . . 12

Thursday . . . 13

Friday . . . 14

Saturday . . . 15

Monday . . . 16

Tuesday . . . 17

Wednesday . . 18

Thursday . . . 19

Wednesday . . .	13	{ Bankrupt Petitions and Causes.
Thursday . . .	14	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . .	15	{ (Petition-day) Petitions and Ditto.
Saturday . . .	16	{ Short Causes and Causes.
Monday . . .	18	{ Bankrupt Petitions and Causes.
Tuesday . . .	19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . .	20	{ Bankrupt Petitions and Ditto.
Thursday . . .	21	{ The 2nd Seal—Motions.
Friday . . .	22	{ (Petition-day) Petitions and Causes.
Saturday . . .	23	{ Short Causes and Causes.
Monday . . .	25	{ Bankrupt Petitions and Causes.
Tuesday . . .	26	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . .	27	{ Bankrupt Petitions and Ditto.
Thursday . . .	28	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . . March	1	{ (Petition-day) Petitions and Ditto.
Saturday . . .	2	{ Short Causes and Causes.
Monday . . .	4	{ Bankrupt Petitions and Causes.
Tuesday . . .	5	{ Pleas, Demurrers, Exceptions, Causes; and Further Directions.
Wednesday . . .	6	{ Bankrupt Petitions and Ditto.
Thursday . . .	7	{ The 3rd Seal—Motions.
Friday . . .	8	{ (Petition-day) Petitions and Causes.
Saturday . . .	9	{ Short Causes and Causes.
Monday . . .	11	{ Bankrupt Petitions and Causes.
Tuesday . . .	12	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . .	13	{ Bankrupt Petitions and Ditto.
Thursday . . .	14	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . .	15	{ (Petition-day) Petitions and Ditto.
Saturday . . .	1	{ Short Causes and Causes.
Monday . . .	18	{ Bankrupt Petitions and Causes.
Tuesday . . .	19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . .	20	{ Bankrupt Petitions and Ditto.
Thursday . . .	21	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday . . .	22	{ Short Causes and Causes.
Saturday . . .	23	{ Bankrupt Petitions and Causes.
Monday . . .	25	{ General Petition-day.
Tuesday . . .	26	{ Bankrupt Petitions.

Vice-Chancellor Edgiam.

Thursday . Feb:	7	{ The 1st Seal—Motions and Causes.
Friday . . .	8	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . .	9	{ Short Causes, Petitions, (unopposed first,) and Causes.
Monday . . .	11	
Tuesday . . .	12	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . .	13	
Thursday . . .	14	
Friday . . .	15	
Saturday . . .	16	{ Short Causes, Petitions, (unopposed first,) and Ditto.
Monday . . .	18	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . .	19	
Wednesday . . .	20	
Thursday . . .	21	{ The 2nd Seal—Motions and Ditto.
Friday . . .	22	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . .	23	{ Short Causes, Petitions, (unopposed first,) and Ditto.
Monday . . .	25	
Tuesday . . .	26	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . .	27	
Thursday . . .	28	
Friday . . . March	1	
Saturday . . .	2	{ Short Causes, Petitions, (unopposed first,) and Ditto.
Monday . . .	4	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . .	5	
Wednesday . . .	6	
Thursday . . .	7	{ The 3rd Seal—Motions and Ditto.
Friday . . .	8	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday . . .	9	{ Short Causes, Petitions, (unopposed first,) and Ditto.
Monday . . .	11	
Tuesday . . .	12	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday . . .	13	
Thursday . . .	14	
Friday . . .	15	
Saturday . . .	16	{ Short Causes, Petitions, (unopposed first,) and Ditto.
Monday . . .	18	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday . . .	19	
Wednesday . . .	20	
Thursday . . .	21	
Friday . . .	22	{ Short Causes and Ditto.
Saturday . . .	23	{ The 4th Seal—Motions and Causes.
Monday . . .	25	{ General Petition-day.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 16, 1850.

BANKRUPT LAW CONSOLIDATION BILL, 1850.

LORD BROUGHAM's ambition to codify the Bankrupt Laws is "untired by time," and unaffected by repeated and signal failures. He promised, at the close of the last Session of Parliament, to lay on the table of the House of Lords, at the earliest opportunity, another Bankrupt Law Consolidation Bill. He has been better than his word! The new bill has not only been laid on the table, but is already printed, and accompanied by a "Paper of Observations explanatory of the object of the Bill and of the Amendments and Alterations," consisting of 12 folio pages. The ardour of the noble and learned Law Reformer, however, was not satisfied with this achievement. He did not wait for the meeting of parliament, but actually had the bill printed for *private* circulation, by her Majesty's printers, and in the shape in which bills are usually printed for the House of Lords, some time before Christmas last. At whose expense this anteseSSIONAL edition was printed we have no means of knowing, but it has been stated, that the mere printing of the multiplied parliamentary editions of the bill, which resulted in that singular specimen of legislative accuracy and profundity, the "Bankrupt Law Consolidation Act, 1849," cost the country no less a sum than *six thousand pounds*!!

Commending this branch of the subject to the consideration of the financial reformers, we venture to ask, what security the public has, that the experiment now proposed may not be as costly and as unsuccessful as those which preceded it? Assuming that the mild influence of Lord Brougham's persuasive eloquence in par-

liament, aided by the "pressure from without," will induce the House of Commons to entertain the subject during the present Session, and to adopt the bill now before the House of Lords, what assurance is there that parliament will not be required, in the Session of 1851, to pass another act to alter and amend the act of 1850? Past experience renders such a result more than probable, and its suggestions are confirmed by a consideration of the provisions of the measure now before us. In this bill there is no attempt to deal with any of those matters of principle which persons conversant with the law and practice of bankruptcy deem of primary importance. It is not proposed to mitigate the harshness and severity, or to cure the startling inconsistency of any of the provisions of the act of last Session; but there is an ostentatious and somewhat offensive exposure of the blunders and mistakes which occurred when the Commons' Committee undertook hastily to remodel a measure of such magnitude, and abounding with such crudities and novelties, as that sent down from the Peers in the month of June last. In the "Paper of Observations, &c.," already alluded to, the scope of the new bill is thus stated:—

"The object of this bill is the complete consolidation of all the acts and parts of acts relating to bankrupts, and to arrangements between debtors and their creditors, in one statute, in the form of a digest or analytical arrangement under appropriate heads,—the improvement of the constitution of the Court of Bankruptcy,—and the correction of errors and omissions in 12 & 13 Vict. c. 106."

The alterations in the constitution of the Court, as contemplated by the new bill, are:—The appointment of a chief Commissioner in the Court of Bankruptcy, with such additional remuneration as the House of Commons may think fit to attach to the

office,—a prospective reduction of the number of country Commissioners and Registrars, in addition to the reduction of town Commissioners and Registrars, provided for by the 12 & 13 Vict. c. 106, ss. 7 & 26—and certain regulations as to the offices of Chief Registrar and Registrar, which will be rendered totally unnecessary by the short bill mentioned in our last number, introduced by Lord Cottenham, providing that the office of Chief Registrar shall be abolished, and the duties hereafter performed by the Secretary of Bankrupts.¹

In the admirable lecture lately delivered by Mr. Macqueen at Lincoln's Inn, on the Bankruptcy Act of last Session, and which, as we expected, has since been printed,² we find that the novel absurdity of dividing the certificates of bankrupts into three classes is very happily exposed. The learned lecturer thus deals with this provision:—

"The awarding of a certificate, which formerly depended on the creditors, now rests, and indeed for some years past has been placed exclusively in the hands of the Commissioners of Bankruptcy; to whom, by the recent act, a most delicate and critical jurisdiction has been entrusted for the first time. For not only are the Commissioners to examine the trader's whole life, both before and after the bankruptcy, but they must likewise determine to which of three distinct classes his certificate is to belong. To a trader of very high character, whose bankruptcy has arisen from unavoidable losses and misfortunes, a certificate is to be awarded as of the *first class*. To a trader of tolerably good character, whose bankruptcy has not wholly arisen from losses and misfortunes, a certificate is to be awarded as of the *second class*. To a trader of indifferent character, whose bankruptcy has not arisen from unavoidable losses and misfortunes, but perhaps from carelessness and extravagance, without fraud, a certificate is to be awarded as of the *third class*. The statute (so far as I can see) lays down no rule, and furnishes no guide, to govern or assist the Commissioner in the exercise of his most difficult and onerous discretion.

"A very little time will tell us how this system of granting classified or qualified certificates is to work. It has the merit of perfect novelty in this country, and is, perhaps, of foreign importation. A merchant in the city is said to have suggested it. It was no part, I understand, of Lord Brougham's plan, and

there is nothing like it in any other branch of our jurisprudence. Whether the Commissioner, in judging of the conduct of a trader, is to proceed on *moral* or on *legal* grounds, or on a mixed consideration of both, is not stated. He has a task before him, which can in but few instances be satisfactorily performed. But even if it were in every case practicable to gauge the integrity of a bankrupt with the nicest exactitude, or to weigh it in the finest scales, it may be doubted whether the operation would always be of use. For what good end is to be gained by attaching a permanent brand or stigma to a man who obtains a certificate of the second or of the third class? Is it for punishment, or is it for example? If for punishment, it is without trial; and if for example, it is without edification. What seems odd is, that in each of the three cases the terms of the certificate are precisely the same. A certificate number *three* gives as much protection to the bankrupt as a certificate number *two* or number *one*. The only difference is in the label or title; and that difference may be either a lasting distinction or a lasting slur, at the option of a single Commissioner acting upon his own impressions without the aid of a bar or a jury. What security have we in such a case for uniformity of decision? The Commissioner at Leeds may proceed on moral grounds,—the Commissioner at Manchester on legal. The one may have extremely rigid, the other comparatively easy, notions of commercial integrity. Thus the unhappy bankrupt's reputation and standing in the world will in many cases be a question of geography. What appears to make the thing worse is, that there are, so far as I can see, no directions in the act requiring the Commissioners to state the grounds of their decision, so as to give the bankrupt some chance of redress upon appeal."

The learned lecturer intimates, we dare say correctly, that the classification of certificates was no part of Lord Brougham's plan, but there is tolerably good evidence that the ingenious suggestion of the merchant in the city was readily adopted by his lordship, and in the bill now before parliament, which we suppose must be considered as his lordship's, he does not propose to make any alteration in this part of the act of last Session, nor does he suggest the repeal of the 259th section of the 12 & 13 Vict. c. 106, which does not come into operation until the 11th April next, but under which, as our readers may remember, a bankrupt taken in execution after the refusal or suspension of his certificate, cannot be discharged from prison for the full period of one year, except by order of the Court.³

The unaccountable and inconsistent pro-

¹ The scope of this bill is stated *ante*, p. 273.

² By Sweet, 1, Chancery Lane. It contains in a short compass an able and instructive exposition of the principles of the Bankrupt Law, and a popular explanation of the leading provisions introduced by the act of last Session.

³ See Lord Brougham's Bill, printed 30th January, 1860, article 318.

vision contained in the 93rd section of the 12 & 13 Vict. c. 106, by which a trader petitioning for adjudication against himself, is bound to satisfy the Court that his estate can pay his creditors 5s. in the pound besides expenses, is also retained without alteration.

It may at once be conceded that an act to amend the mistakes and inconsistencies of the act of last Session must speedily be passed, but it would obviously be desirable that the operation of the act should be better and more extensively tested and understood before any attempt is made to correct its defects. That the bill now introduced by Lord Brougham will be adopted by the legislature is extremely improbable. The period for codifying the Bankrupt Laws has not yet arrived. Lord Cottenham, Lord Campbell, and Vice-Chancellor Knight Bruce, it seems, concur with what we have reason to believe is the prevailing opinion of the profession; that the distinction between bankruptcy and insolvency is an artificial distinction which there is no sufficient reason for preserving. In a letter, which we have already published, addressed by Vice-Chancellor Knight Bruce to Mr. Walpole, the learned judge thus expresses himself upon this point:—

"My opinion is in favour of the practicability and expediency of uniting Bankruptcy and Insolvency in one system: the objections capable of being urged against such a measure appearing to me far overbalanced by the reasons for it, without taking into the account the very discreditable inconsistencies and anomalies occasioned by the present existence of each system separately. The persuasion that this union must ere long take place, and that it must probably effect various alterations in each branch, has had perhaps a tendency to render me not very anxious as to the state of the Bankrupt Law by itself."

It is quite obvious that until this question, which is at the threshold, be discussed and finally determined upon, any attempt to codify or consolidate the bankruptcy law would be premature. It surely cannot be considered expedient in a commercial country to have annual changes in the law affecting transactions between debtor and creditor, much less to have the principles upon which the whole system is constructed subject to such alterations.

The alterations now proposed by Lord Brougham to be made in the Law of Bankruptcy, and which it is only fair to state, are confined to and comprehended in these "Articles," will be more conveniently observed upon in a future number.

ATTORNEYS' AND PROCTORS' ANNUAL CERTIFICATE TAX.

REASONS FOR THE REPEAL OF THE TAX.

It appears that strenuous measures are in progress for bringing the question of the repeal of the Annual Certificate Tax on attorneys, solicitors and proctors, before the House of Commons, at a very early period. The Council of the Incorporated Law Society have had an interview with Lord Robert Grosvenor, who has very cordially undertaken the charge of the proposed bill, the motion for which is already on the notice book for the 26th inst. We understand that his lordship was consulted on the expediency of proposing some tax which might be levied in substitution of the present unequal impost, but he expressed a decided opinion that it was not the duty of the parties seeking to remove the burden from themselves to throw it on the shoulders of others. This notion has frequently been urged upon our attention, but we have never acceded to it, further than that for the sake of public policy, it might be advantageous that all classes of professional men should be annually registered, and for that purpose a fee of 10s. might be required, the amount of which would probably exceed the present certificate tax. But it is for the Chancellor of the Exchequer, not the attorneys, to consider how he can make up his Budget.

The following statement has just been issued by the Law Society, containing the principal arguments and details in support of the repeal of the tax:—

"The Certificate Tax on Attorneys, and a tax on warrants to prosecute, were imposed in 1785, to make up an expected deficiency in the Shop Tax; and the two latter taxes were afterwards repealed.

"All the stamps on law proceedings were abolished in the year 1824, as 'Taxes on the Administration of Justice.'

"The Certificate Tax remained, and has largely increased. At first, if the practitioner resided in London or Westminster, he was charged 5l. a year, and if in any other part of Great Britain 3l. The tax was increased in 1804^a to 10l., and in 1815^a to 12l. a year for practitioners in town, and 8l. for those in the country. By the last returns the amount paid for this tax for the year ending 5th Jan. 1849, was 88,980l., and it is this tax that is sought to be repealed.

"A Stamp Duty of 110l. was also charged in 1804^a upon articles of clerkship, and 20l.:

^a 25 Geo. 3, c. 80.

^a 5 Geo. 4, c. 41.

^a 44 Geo. 3, c. 98.

^a 55 Geo. 3, c. 184.

upon admission; and these sums were increased in 1815 to 120*l.* and 25*l.*; so that no attorney can be admitted to practise without having first paid stamp duties amounting to 145*l.*, and in addition he has to pay the annual certificate tax. The duties paid on articles of clerkship, on an average of the last 10 years, calculated from the returns, amounted to the annual sum of 56,996*l.*; and on annual admissions to 9,900*l.*

"These taxes are *partial, unequal, and therefore unjust.*

"The pupils or apprentices in the medical profession, and in all trades and other business, pay a duty on their indentures only proportioned to the premium. The premium on articles of clerkship, does not, on the average, exceed 200*l.*; and consequently, the duty thereon, if equal justice were observed, ought to be 6*l.* only, instead of 120*l.*

"No other profession than that of attorneys, solicitors, and proctors, is charged with similar taxes; nor is any *cassal* tax imposed on the higher branch of the legal profession.

"These taxes are not founded on any *just principle of taxation.*

"If a tax on the talent and industry of individuals engaged in a lawful calling be at all expedient, it ought to be levied not only on the three learned professions, but equally on all merchants, bankers, manufacturers, traders, and others.

"It is now an established principle that there should be no '*Class Legislation*;' that taxes should be general, and not imposed in respect of manufacturing, agricultural, or any other class.

"If, therefore, it be wrong to levy imposts on the community for the benefit of a class, it must be equally wrong to impose burdens on one class in exoneraton of the public at large.

"The attorneys and solicitors, in common with their fellow-subjects, pay at least their equal share of all taxes imposed on the entire community.

"The Certificate Tax, which falls exclusively on attorneys and solicitors, amounts, on an average of their income to 4*l.* per cent.; and therefore, if they are still required to pay the *Income Tax* on their professional earnings, ought they not in fairness and justice to be relieved from the Certificate Tax? otherwise they will be subjected to a burden of double the amount borne by the public generally.

"By the operation of many recent changes in the law and the practice of the Courts, and by some late acts as to deeds and other documents, the emoluments of the profession have been much diminished, although the disbursements continue very nearly the same as heretofore. The great bulk of stamp duties payable on conveyances, and deeds in general, and on probates of wills and administrations, is paid to the government through the medium of attorneys, solicitors, and proctors, who until recently were allowed a discount (which averaged 46,000*l.* a year*) on such stamp duties,

as some remuneration for the advance of the money. By an act of the last session this discount on all stamps above 10*l.* was taken off, and thus upwards of 40,000*l.* a year has been saved to the government at the expense of the attorneys, solicitors, and proctors. This is submitted to the consideration of the legislature as another reason, if any were required, why the tax on certificates should be repealed.

"The severe pressure of the certificate tax is strikingly shown by the inability of several hundred attorneys to pay it within the time fixed by the act, the 16th December, in each year. In the year 1848, no less than 399 attorneys did not pay it till the following year, and in 1849 the number was increased to 596, —all of whom are consequently excluded from the Stamp Office Law List. Of these, no less than 69 paid only within the last month of the year; and 190, having omitted the payment for upwards of a year, were compelled to make special applications to the Court for permission to renew their certificates."

MR. CHARLES PHILLIPS' DEFENCE OF COURVOISIER.

THE remaining charges of the *Examiner* against Mr. Phillips, are disposed of with equal conclusiveness by the *Law Review*. He is accused of having "*advanced the foulest charges against the police, the groundlessness of which he knew, as well as his client's guilt.*" First, as to the "*foulest charges.*" They consisted, according to the *Times* Report, of an assertion that "there existed a strong suspicion, if not actual proof, that the prisoner's trunk had been practised on,"—"to provide proofs of guilt against the prisoner." Mr. Phillips alluded to the discovery of a pair of blood-spotted gloves, and some blood-spotted handkerchiefs, found in the prisoner's box on the 14th May, several days after Courvoisier had been in custody; although the box had been twice previously searched, viz., on the 6th and 8th May, by experienced and acute police, for the express purpose of discovering such things, in vain:—and Mr. Phillips elicited from the police that though they searched as narrowly as possible, there were no such things there;—while those who found them declared that "no one with his eyes open" could have failed to discover the articles in question, had they been there—"for that they lay near the top of the trunk!" So strongly did the counsel for the prosecution suspect the *mala fides* of the evidence, that he emphatically discarded it in his opening speech! and tried to avert an attack on the police! The cross-examination and speech of Mr. Phillips with re-

* Parl. Paper, 1849. No. 624.

ference to this point, are very able,—and none but a person wilfully blind to the real nature of the case, can suppose that Mr. Phillips, if he was, as is admitted, bound to continue his defence, was to stand by and see his client convicted on false evidence. Whether it was false evidence,—we mean, whether the evidence was fabricated—we leave to all unprejudiced and competent judges to decide, on reading the *Law Review*, which has upon this point left a very painful impression on our minds. Why have these facts been so long suppressed—and Mr. Phillips placed for ten years under the imputation of advancing knowingly, false and foul charges against the police?—Why was suppressed the fact, that the evidence of the policeman Baldwin was altogether discarded by Lord Chief Justice Tindal, in directing the jury,—in consequence of the powerful and successful cross-examination of Mr. Phillips—the “attack on Baldwin” being simply said to have been “most unjustifiable”—when the Lord Chief Justice’s adoption of Mr. Phillips cross-examination proved it to have been “most justifiable?”—Why again was suppressed the glaring fact that Mr. Phillips very strongly testified to the honourable veracity of the policeman who had given the strongest evidence against Courvoisier? Thus justly and successfully discriminating between good and bad witnesses. But for the *Law Review*, these facts might never have come to light. He is again charged with “defaming the character,” and “uttering gross imputations on,” and “wicked and unfounded aspersions,” of Mrs. Piolano and her husband. To support this charge, a passage is picked out of the speech, tending to show that their “hotel” in Leicester Place was one of an inferior and disreputable character; while the passage in question is but a statement of the evidence given by Mrs. Piolano herself. Mr. Phillips complains of the prosecutors having given him no opportunity of inquiring into the character and habits of the most critical witness brought against his client! Yet the *Examiner* would, from its mode of quotation, have it believed that the mere statement of the evidence was a gratuitous slander by the advocate! Surely all these are serious suppressions and distortions of fact, and committed not to exculpate, but, as is forcibly put by the *Law Review*, to inculpate and accuse! No man’s public or private sayings or doings would be safe for a moment, if subjected to such unjustifiable treatment as this.

The last charge of the *Examiner* has dwindled down from the direct assertion, or at least a direct insinuation—under which Mr. Phillips has suffered for ten years—that Mr. Phillips had solemnly called on the Deity to vouch his belief that Courvoisier was innocent,—to a “solemnly acted belief of the prisoner’s innocence.” This charge, also, is as satisfactorily disposed of as the others. “What is meant,” asks the reviewer, “by an advocate’s acting a belief of his client’s innocence? Would the *Examiner* have him do the reverse, and act a belief of his client’s guilt? Would they have an advocate go through a ‘solemn’ and cruel mockery only of defence? Would they have his looks, his gestures, his topics, ‘solemnly’ belie the purpose for which he had professedly risen?” The expression in Mr. Phillips’ speech, as reported, relied on by the *Examiner* in support of this new-modelled charge is,—“The omniscient God alone knows who did this deed.” The reviewer asks, and we ask with him, whether it is not cruel and monstrous to suppose that these words, even if used, were intended to convey that the speaker deliberately appealed to the Deity to attest the truth of his assertion that he was ignorant of his client’s guilt: a fact the contrary of which he was at the moment aware was known to Mr. Baron Parke, Mr. Chalkson, Mr. Flower, the prisoner, all of them listening to him; and would within a few hours be announced to the whole world as having been known by Mr. Phillips before he addressed the jury? Even admitting the expression to have been used as reported, “it should,” forcibly argues the reviewer, “on every legitimate and fair principle of interpretation, be regarded as a mere figure of speech, most improper doubtless, but involving no more of deliberate moral turpitude than the too frequent conversational expression—“God knows!” or “God only knows!” a fact which one instant’s reflection would show the irreverent speaker must be known to one, two, or many persons. Nothing but a reckless determination to draw harsh inferences, would induce a man to persevere in torturing the expression attributed to this eloquent advocate into an impiously deliberate appeal to the Deity to attest a known falsehood!”

But the testimony of a gentleman at the bar, of veracity and honour, Mr. Fortescue (of the Home Circuit), is given by the Reviewer, to the fact that the following were the exact words used by Mr. Phillips:—and which particularly impressed Mr. For-

rescue at the time, which he mentioned to Mr. Phillips the day after, and is ready to swear to.

"But you will say to me, if the prisoner did not, who did it? I answer, *ask the Omniscient Being above us who did it*: ask not me, a poor finite creature like yourselves: ask the prosecutor who did it;—it is for *him* to tell you who did it, it is not for *me* to tell you who did it; and until he shall have proved, by the clearest evidence, that it was the prisoner at the bar, beware how you imbrue your hands in the blood of that young man."

"How easy," proceeds the Reviewer, "for even the ablest reporter (and the report of these proceedings in the *Times* evinces the utmost ability and fidelity)—in throwing the above sentence into the third person, to adopt the phraseology, on the literal accuracy of which it is now sought to impale the reputation of a most distinguished advocate!"

"But even admitting that Mr. Phillips, in the course of a three hours' speech, was betrayed into the momentary adoption of this expression,—which we are satisfied, for reasons above stated, was not the fact,—is it not the height of injustice and uncharitableness to put upon it the very worst construction of which the words are susceptible? To weigh with malignant nicety verbal expressions, uttered, too, on such a fearful occasion, in golden scales?"

We have thought it right to go thus far into the question, because of its great professional interest and importance, and also out of justice to a long and grievously aspersed, but honourable and distinguished member of the Bar, now holding a responsible judicial office. Nothing can be more feeling and dignified than the concluding passages of this highly interesting article. The question of the Reviewer we earnestly echo: "*Who* can be interested in thus throwing dark shadows over the evening of an unoffending and honourable man's life?"

—And with equal earnestness we would concur in the Reviewer's concluding and severe recommendation: "To those who have originated and perpetuated this charge, we recommend a more strict obedience to both the letter and the spirit of the divine commandment, *Thou shalt not bear false witness against thy neighbour*."

We wish, in concluding this subject, to observe that, amidst the conflict of opinion, concerning Mr. Phillips, which has been excited by his pertinacious accuser, there is an entire unanimity upon one point—that the conduct so unjustifiably imputed to Mr. Phillips is *not only unexcused but vehemently repudiated by the Bar*; and that by the recent discussion good must necessarily result to the cause of justice, and the character of the British advocate. The controversy has been, whether Mr. Phillips, in his zeal for his client, had departed from the path of duty. It is now established beyond all doubt that he did no more than he was bound to do, according to the emphatic testimony of the eminent judges who presided at the trial: and we will go further, and express our concurrence in an opinion which we have heard expressed by a very eminent member of the bar,—that it is truly wonderful how Mr. Phillips contrived, in a position of such unprecedented difficulty, to observe the rule of right so steadily as he did. If he had been caught tripping even, large allowances should have been made for him under the circumstances; and concurrently with our distinguished quarterly contemporary, we enter our solemn protest, as a matter of justice towards both the gentleman in question and the body of the Bar generally, against "*weighing in golden scales, with malignant nicety,*" particular expressions in a three hours' agitated speech, and attaching to them the foulest signification of which they are susceptible, in spite of every presumption and probability to the contrary.

PARLIAMENTARY COSTS.

CHARGES OF PARLIAMENTARY AGENTS, ATTORNEYS, SOLICITORS, AND OTHERS.

In pursuance of "*The House of Commons Costs Taxation Act, 1847.*"

[Concluded from our last Number, p. 283, *ante*.]

III.—Drawing Documents.

Instructions:

Drawing any special Instructions as to the publication of the Notice, contents of *Plaint* and Books of Reference, and other requirements of the Standing Orders (if required):

	£	s.	d.
If less than 5 folios	0	6	8
If less than 11 folios	0	13	4
If of greater length, per brief sheet (of 10 folios)	0	13	4

Notice in Gazette or Newspaper :	£	s.	d.
If less than 11 folios	1	1	0
If more than 11 folios, per folio	0	2	0
Subscription Contract :			
Instructions	0	13	4
Per folio	0	2	0
Alphabetical List of Subscribers, per folio	0	1	4
Book of Reference :			
Per folio	0	2	0
Index to Book of Reference, for preparing notices, per folio (including such copies as may be necessary for preparing the notices)	0	2	0
Lists of Owners, Lessees and Occupiers :			
Per folio	0	2	0
Estimate of Expenses, or of Rates and Tolls :			
Drawing	6s. 8d.	0	10 0
Fair copy of signature	3s. 4d.		
Declaration in lieu or in aid of Subscription Contract (according to circumstances)		from	0 13 4
		to	1 1 0
Applications to Owners, Lessees and Occupiers of Lands and Houses :			
Drawing and fair copy for service, each application (including the Letter of Assent, Dissent or Neutrality, left or forwarded therewith)	0	10	0
Each Notice of Abandonment and other Notice not being in the form set forth in Appendix (A.) to Standing Orders	0	5	0
Petition for Bill :			
If less than 11 folios	1	1	0
If more than 11 folios, per folio	0	2	0
Petition against Bill, and praying to be heard by Counsel :			
Instructions	0	13	4
If less than 11 folios	1	1	0
If more than 11 folios, per folio	0	2	0
Other Petitions for or against Bill :			
If less than 11 folios	0	13	4
If less than 15 folios	1	0	0
If more than 15 folios, per sheet	0	13	4
or, per folio	0	1	4
Bill :			
Instructions	2	2	0
Drawing Bill, per folio	0	2	0
Additional clauses, per folio	0	2	0
Statements of Proofs on Standing Orders :			
Per brief sheet of 10 folios	0	13	4
Statements for Standing Orders Committee (according to length and other circumstances)		from	0 13 4
		to	2 2 0
or, per brief sheet of 10 folios	0	13	4
Memorials complaining of Non-compliance with Standing Orders :			
If less than 11 folios	1	1	0
If more than 11 folios, per folio	0	2	0
Briefs :			
Instructions for Brief (according to circumstances).			
Drawing same, per brief of 10 folios	0	13	4
Statements, Reports, or other Documents prepared for use in Proceedings of the House, or in preparing to comply with the Standing Orders, per folio	0	1	4
or, per brief sheet of 10 folios	0	13	4
Affidavits of Service of Notice, and other matters which may be proved by Affidavit, unless very long and special :			
Each affidavit, and copy	0	10	0
Agent's Declaration, and Copies (according to circumstances)		from	0 10 0
		to	2 2 0
Breviate of Bill for Mr. Speaker :			
[To be included in the charge for making up Bill for House]. See infra			

Motions, Special, for Members :

Drawing	s. d.	
Fair Copy for Member	6 8	} 0 10 0
	3 4	

[Note.—Charges for drawing, and copies of all ordinary Motions on the several stages of the Bills, and other proceedings in the House, to be included in the Fees for Attendance.]

[Note.—In all cases the charge for Drawing any Document will include one fair copy to keep for the Solicitor's or Agent's own use, or for Counsel, or an Agent to settle.]

IV.—Parliamentary Agents' Charges.

For Perusing and Settling Documents Drawn by a Solicitor (when required).

Notices for Gazette and Newspapers :

If less than 11 folios (according to length and other circumstances)		from 0 10 6 to 1 1 0
If more than 11 folios (according to length and other circumstances)		from 1 1 0 to 2 2 0

Petition for Bill :

If less than 11 folios		from 0 10 6 to 1 1 0
If more than 11 folios		from 1 1 0 to 2 2 0
(Or if the same shall exceed 50 folios, 1s. per folio upon the whole Petition)		

Petition against Bill, and praying to be heard by Counsel or Memorial complaining of non-compliance with the Standing Orders :

The same charges as for a Petition for a Bill.

Other Petitions, against or in favour of Bills, each Petition		0 6 8
Statements of Proofs on Standing Orders, or Statements for Standing Orders	from	0 6 8
Committee, Reports and other Documents (if required), when the same have been drawn by the Solicitor (according to circumstances)	to	1 1 0
or per brief sheet of 10 folios		0 6 8

Perusing and Settling Bills and preparing the same in Parliamentary form and for Press :

For any Bill not exceeding 60 folios, according to the length of the Bill, and the nature and extent of revision	from 2 2 0 to 5 5 0
For any Bill exceeding 60 folios and less than 150, according to the length of the Bill, and the nature and extent of revision	from 5 5 0 to 10 10 0
For any Bill exceeding 150 folios, according to the length of the Bill and the nature and extent of revision ; but not exceeding (except under special circumstances) one-half the charge for drawing any such Bill	5 5 0 and upwards.

Perusing and Settling Clauses and Amendments (according to length and other circumstances.)

If a Parliamentary Agent shall have drawn any of the above Documents himself, or if the Solicitor shall be acting as Parliamentary Agent, no charge shall, on any account, be made for perusing and settling such Documents in addition to the charge for drawing.

V.—Copies of Documents.

Books of Reference, Lists of Owners, Lessees and Occupiers, and other similar Documents required by the Standing Orders to be deposited, where the same are deposited in Manuscript :

For the copies so deposited, per folio (of 72 words or figures) 0 1 0

For all Copies of Notices, Petitions, Bills, Clauses, Statements, Memorials, Drafts, Briefs, Abstracts and other Documents required for Proceedings of the House, or in preparing to comply with the Standing Orders :

Per folio	0 0 8
or, per brief sheet of 10 folios	0 6 8

For ingrossing Petitions, Memorials, Subscription Contracts, and other Parliamentary Documents :	£	s.	d.
Per folio	.	.	0 1 0
Copies of Minutes of Evidence :			
Per folio	.	.	0 0 8

VI.—Examining Documents.

Prints of Bills :			
Proofs	.	.	0 13 4
or, per page of print	.	.	0 1 0
Revises	.	.	0 6 8
or, per page of print	.	.	0 0 6
Notices in the Gazette or Newspaper :			
Proof from the Printer	.	.	0 3 4
			to
			0 13 4
			from
Revises (according to circumstances)	.	.	0 3 4
			to
			0 6 8

VII.—Making up Copies of Bills and Filling up Amendments.

Making up Bill for House, and drawing Breviate for Mr. Speaker, and fair copy .	1	1	0	
Filling up Bills with Amendments :				
For the first copy	{ unless the Amendments be very numerous and special	0	6	8
For each other copy		0	3	4
If new Clauses or Amendments be added, exceeding five folios, copies of the same may be charged at 8d. per folio.				

VIII.—Correspondence.

Between Solicitor and Parliamentary Agent :

The ordinary Correspondence between Parliamentary Agents and Solicitors is not to be charged to their Clients, but such letters only as contain professional advice and instructions.

C. S. LEFEVRE, *Speaker*.

WOLVERHAMPTON LAW ASSOCIATION.

At the annual general meeting of the Members, held at the Swan Hotel, Wolverhampton, on Friday the 11th of January, 1850, Mr. Dent in the chair :

The report of the Committee having been read—

It was unanimously Resolved,

1. That the Report of the Committee be received and entered on the minutes.
2. That the first rule of the Association be altered, by expanding from the second proviso the words "for the County of Stafford," so as to enable the society to admit as honorary members, justices of the peace for the borough of Wolverhampton and other jurisdictions.
3. That Mr. Manby be elected to fill the office of president, and Mr. Charles Corser the office of vice-president of the association and library, until the General Meeting in 1851.
4. That Mr. Thorne be re-elected honorary secretary and treasurer of the association until the general meeting in 1851.
5. That Mr. Rutter, Mr. Dent, and Mr. Crisp, be re-elected members of the Committee; and Mr. Browne, Mr. Underhill, and Mr. Whitehouse be elected members in lieu of those who go out and are not eligible for re-election under rule 8.
6. That the thanks of the meeting be given

to the president, vice-president, honorary secretary and committee of the past year, for their attention to the interests of the society.

7. That the report of the Committee, and the resolutions of this meeting be printed, and that a copy thereof be sent to each member of the society, including the honorary members, and to every solicitor residing within the district named in the First Rule, also to the secretaries of the Metropolitan and Provincial Law Societies, and that a copy of the second resolution be sent to the justices of the peace for the borough.

8. That the thanks of this meeting to given to Mr. Dent for his able conduct in the chair.

REPORT OF THE COMMITTEE.

Your Committee, at the end of their year of office, beg to lay before the members of the association a statement of their proceedings, and an account of their receipts and expenditure, for the past year.

Adopting the recommendation of their predecessors in their report presented to the last annual general meeting, your Committee procured petitions for the repeal of the annual Certificate Duty to be signed by nearly the whole of the attorneys practising in this county, and forwarded the same to the several members for the county and boroughs, for presentation to the House of Commons, in support of the intended motion for leave to bring in a bill for the repeal of this tax.

Lord Robert Grosvenor, who had kindly undertaken the conduct of the bill, gave notice of motion for the 19th of June, but his lordship finding it impossible to bring the motion on, at the earliest, until the last week in July, when many of the members would be absent, thought he should best consult the interest of the petitioners by postponing the motion to an early day in the next Session. when his lordship expressed his hope of being successful in removing the impost.

Your Committee also continued the efforts, which their predecessors had commenced, to induce the Incorporated Law Society, or the Metropolitan and Provincial Law Association, to bring before Parliament the subject of the unsatisfactory state of the law as to the stamp duties on the transfer of mortgages, and the circumstances of the inequality and injustice of the Stamp Act; and the latter society at length caused the draft of a bill, as respects the stamps on the transfer of mortgages, to be prepared, but it does not appear to have been proceeded with: why it was permitted to drop, your Committee have not been informed.

A consideration of the Bankrupt Law Amendment and Consolidation Bill, whilst in Committee in the House of Lords, also occupied the attention of your Committee, and they stated their views fully on the most important alterations proposed, and suggested improvements which they thought might be made in some of the intended enactments, particularly with reference to the proceedings on sale of a bankrupt's copyholds. Particulars of the views and suggestions above referred to, were transmitted to the Incorporated Law Society, as requested by them, for the consideration of the Council. The act as passed embraces some of the improvements which your Committee suggested.

The Manchester Law Society having called the attention of your Committee to the prevalent and increasing custom amongst counsel of unduly pressing their clients to refer cases, and particularly instancing a case which occurred at the last Liverpool Assizes, your Committee felt called upon to pass resolutions condemnatory of such a course.

One other subject, of some importance to the profession, has also been brought under the consideration of your Committee, namely, the claim recently advanced by the members of the bar attending the York County Court to exclusive audience in insolvency cases. The judge having deferred his decision for the purpose of consulting the Attorney and Solicitor-General on the subject, and your Committee feeling that the question was one which not only materially affected the interests of the bar and of the attorneys, but also those of the public, thought it right to call a special general meeting of the members of this society, that each might have an opportunity of expressing his views, and at which meeting resolutions were passed, expressive of the opinion of the society, that if such a privilege were conceded, an unnecessary and burdensome ex-

pense would be inflicted on suitors, the rights of attorneys, as recognized by the Legislature, encroached upon, and an act of manifest injustice done to that branch of the profession. A copy of such resolutions, and particulars of the facts upon which they were founded, were transmitted to the Secretary of the Metropolitan and Provincial Law Association, who were taking active measures for resisting the attempt of the Bar.

A charge of unprofessional conduct having been brought against a member of this society, a special meeting of your Committee was held for the purpose of hearing the parties, when an explanation was given, and an apology offered, which your Committee deemed satisfactory.

Your Committee considering it exceedingly desirable that a more eligible room than the present one should be obtained for the society, and thinking that arrangements might probably be made with the promoters of some intended new public building to provide suitable accommodation, communicated with Mr. George Robinson, the solicitor of the directors of the New Corn Exchange, and your Committee are happy to acquaint the members of the Law Society, that Mr. Robinson fully entered into their views, and that he, subsequently, on behalf of the directors, offered the society a room in the intended Exchange, of the dimensions of twenty-five feet in height, twenty-eight feet in length, and sixteen feet in width, and your Committee have accepted such offer on behalf of the society, subject to an arrangement, at the proper time, as to term of occupation, rent, &c.

Your Committee conceive that this arrangement will be found beneficial to the society, as its welfare must necessarily be greatly promoted, by having a good and convenient room in so central and desirable a situation as that fixed on for the Corn Exchange.

Your Committee have, during the past year, added to the library, the Reports of the Vice-Chancellor of England's Court, comprising twenty-three volumes complete, and two parts of the current volume, bound, and in good second-hand condition, which they have purchased of Messrs. Stevens and Norton, the Law Booksellers, for 23*l.* 10*s.*

Since the last general annual meeting, one new member has been admitted, and there is a proposal for a second at the next quarterly meeting of the Committee.

One honorary member has also been admitted, and who presented the society with a donation of five guineas towards the library.

The members of the retiring Committee, who will not be qualified for re-election in 1850, are Mr. Phillips, Mr. Gough, and Mr. Walker.

TAXES ON THE ADMINISTRATION OF JUSTICE.

To the Editor of the Legal Observer.

FEES IN CHANCERY.

SIR,—The great injustice of the fees on jus-

tice is very generally admitted, but in the following case it is manifestly apparent; and, as your drawing attention to it may not be unproductive of good, I have ventured to forward it to you for the purpose. It relates to exceptions taken to an answer for impertinence, and you will perceive that the total costs being 17l. 7s., counsel's fees amounted to 4l. 9s.; Court fees 7l. 2s. 10d.; solicitor's fees 5l. 15s. 2d., the

two first more than doubling the last. Of the counsel's fees nothing can be said by way of objection, but surely every objection can be urged against the continuance of such heavy court fees, and I, in common with the profession, hope the time is not far distant, when, for the general good, they will be nearly, if not entirely, abolished.

A SOLICITOR.

BILL OF COSTS ON EXCEPTIONS TO AN ANSWER FOR IMPERTINENCE.	COUNSEL'S FEES.	COURT FEES.	SOLICITOR'S FEES.
	£ s. d.	£ s. d.	£ s. d.
Drawing exceptions	— — —	— — —	0 5 0
Paid counsel to sign	1 3 6	— — —	— — —
Copy, exceptions to file	— — —	— — —	0 1 8
Notice copy and service	— — —	— — —	0 2 6
Petition to refer	— — —	— — —	0 4 0
Paid answering and attendance	— — —	0 7 0	0 6 8
Paid for 50 folios of impertinent matter	— — —	0 16 8	— — —
Copy order for the Master	— — —	— — —	0 2 6
Copy, exceptions for leave	— — —	— — —	0 1 8
Warrants on leaving and to proceed	— — —	6 6 0	0 5 0
Brief to counsel 2s. 6d., copy exceptions 1s. 8d.	— — —	— — —	0 4 2
Fee to counsel and attending	3 5 6	— — —	0 6 8
Attending warrant—Master not in attendance	— — —	— — —	nothing
The time for obtaining the Master's report having expired } [By reason of his absence] attending to get the time } enlarged	— — —	— — —	allowed.
Paid for certificate	— — —	1 0 6	— — —
Paid filing	— — —	0 1 0	— — —
Further warrant to proceed	— — —	0 3 0	0 2 6
Attending thereon, exceptions allowed	— — —	— — —	0 6 8
Paid for report	— — —	1 0 6	— — —
Attending to file, and paid	— — —	0 1 0	0 6 8
Attending for certificate of exceptions filed	— — —	— — —	0 6 8
Attending getting the impertinent matter expunged	— — —	— — —	0 6 8
Paid	— — —	1 0 0	— — —
Petition for taxation of costs	— — —	— — —	0 4 0
Attending and paid	— — —	0 7 0	0 6 8
Copy and service of order	— — —	— — —	0 2 6
Copy for the Taxing Master	— — —	— — —	0 2 6
Drawing bill of costs and copy	— — —	— — —	0 5 4
Warrants on leaving and to tax	— — —	0 6 0	0 5 0
Attending taxing	— — —	— — —	0 6 8
Paid for certificate	— — —	1 2 0	— — —
Attending to file and paid	— — —	0 2 4	0 6 8
Paid poundage	— — —	0 9 10	— — —
	4 9 0	7 2 10	5 15 2

BARRISTERS CALLED.

Hilary Term, 1850.

LINCOLN'S INN. Jan. 29.

Edward Brown Fitton, Esq., B. A.
 Timothy Smith Osler, Esq., L. L. B.
 Thomas Beever, Esq.
 William Wright, jun., Esq.
 John Kishpa Miller, Esq.
 Robert Watkins Taylor, Esq.
 Arthur Harbottle Estcourt, Esq., M. A.
 Herman Ludolphus Prior, Esq., M. A.
 Henry Thomas John Jenkinson, Esq., M. A.
 John Sayer, Esq., M. A.

INNER TEMPLE. Jan. 25.

John Bridge, Esq., M. A.
 Hardinge Stanley Giffard, Esq., B. A.
 Edward Robert Ward, Esq.

January 29.

John Thomas Abdy, Esq., B. C. L.
 William Byam, Esq., B. A.
 George Robert Comyn Chilton, Esq., B. A.
 Samuel Shepherd, Esq.

MIDDLE TEMPLE. Jan. 19.

Henry Armstrong Mitchell, Esq.

John Stephens, Esq., M. A.
Joseph Stone Williams, Esq.
Henry Gough, Esq.

January 26.

Robert Alexander Fisher, Esq.
John Todd, Esq.
George Gatton Hardingham, Esq.
Douglas Robert Glyn, Esq.
Arthur John Otway, Esq.
Robert Oliver Jones, Esq.

Charles John Belcher Hertalet, Esq.
Alfred Whaley Cole, Esq.

GRAY'S INN. Jan. 16.

Saint George Kerr, Esq.
George Francis, Esq.

January 30.

Richard Bolton Barton, Esq., B. A.
John Morgan, Esq.

CANDIDATES WHO PASSED THE EXAMINATION.

Hilary Term, 1850.

<i>Names of Candidates.</i>	<i>To whom Articled, Assigned, &c.</i>
Ainger, Arthur Robert	Hugh Robert Evans, junr., Ely
Ainsworth, T.	
Allway, Samuel Plomer	Henry Johnson, late of 2, New-inn, now of 6 Red Lion-square; William Gregory, 12, Clement's-inn, Middlesex.
Ashley, Alfred	Henry Ashley, 5, Charles-square, Hoxton
Asprey, Joseph Cox	Frederick Asprey, 6, Furnival's-inn, Holborn; Richard Kirkman Lane, 29, Argyle-street, Regent-street
Atkinson, Edward	Fenton Robinson Atkinson, Oak House, Pendleton, Lancashire, and Manchester; John Albott, Esqer, and 46, Lincoln's-inn-fields
Baddeley, Henry John	Joseph Addison M'Leod, 13, London-street, City
Baynham, Walter Lewis	Edmund Singer Burton, Daventry
Bennett, John William	Emanuel William Violet, Banwell
Bingham, George	Thomas Percival Bunting, Manchester
Bompas, George Cox	Philip Smith Cox, 19, Coleman-street, City
Brierley, George	William Stewart, Wakefield; Thomas Lee, Wakefield
Carlisle, William Thomas	John Burley, 8, New-square, Lincoln's-inn
Clark, Joseph	George Clark, 28, Finbury-place
Coad, John Luskey	Edward Lyne, Liskeard; John Swabreak, Gregory, 1, Bedford-row
Cokerell, William	Charles Henry Cooper, 29, Jesus-lane, Cambridge
Cooper, John	Charles Cooper, Manchester
Craven, John, the younger	William Craven, Halifax
Dainty, George Goodall	Henry Lamb, and Henry John Nettleship, Kettering
Davis, John Stanley	Joseph Mallaby, Liverpool
Day, William Ansell	John Loxdale, Shrewsbury; Henry King, Mayfield
Dewes, Charles Saunders	William Dewes, Ashby-de-la-Zouche
Dixon, Charles	David Thomas, Brecon; Henry Drummond, 16, Furnival's-inn
Filder, Edward Jones	John Henry Bolton, Lincoln's-inn
Finch, George	William Mark Fladgate, 43, Craven-street, Strand
Fraser, James	Richard Dawes, Angel-court, Throgmorton-street
Gibson, Charles Francis	Samuel Prentice, 238, Whitechapel-road
Handy, John Alexander	John Troughthear Handy, Malmesbury
Harris, Edward Kelly	John, Pike, 26, Old Burlington-street
Herford, Walter Vernon	Joseph Heron, Manchester
Hicks, William	Philip Longmore, Hertford
Hingston, Richard, jun.	Edward Hoblyn Pedler, Liskeard
Holland, William	Arthur William Tooke, 39, Bedford-row
Holroyd, John Bailey	William Ferguson Holroyd, Halifax; John Jaques, 8, Ely-place
Hudson, William Hector	John Reid Wagstaff, Bradford
Jennings, Thomas Smith	E. Jennings, Chancery Lane
Joel, Joseph George	John Theodore Hoyle Newcastle-on-Tyne; John Martin Cooper, Bishopwearmouth
Joyce, George Prince	James Young, 32, Bloomsbury-square; Thomas Pocock, 58, Bartholomew-close
Jukes, Alfred Meredith	George Paulson Wragg, Birmingham
Kilby, John	Benjamin Applin; Benjamin William Alpin, Banbury
Labrow, Valentine Hicks	George Faulkner, 1, Bedford-row
Lamb, George Warren	Lamb and Nettleship, Kettering
Levy, David Lawrence	Edward Lewis, 7, Adam-street, Adelphi
Lloyd, George	John Hamilton Parr, Liverpool
Lloyd, Thomas	Drew and Wootnam, Newtown
Loe, Thomas Brown	Sir George Stephen, Knt., Furnival's-inn; Henry Barncroft, of Gray's-inn-square
Manning, Charles John	George Frederick Abraham, Great Marlborough-street
Mead, John	Edwin Newman Yeovil; William Richardson, Bedford-row
Meredith, Charles	Robert Fisher, jun., Newport
Palmer, Thomas William	Edward Jennings, 9, Chancery-lane

Phillips, Charles Thomas . . .	John Taylor, Gray's-inn
Porritt, William Henry . . .	Henry Nelson, Leeds
Pulman, William Thurb . . .	Edward Hemingway, Leeds
Richards, Walter . . .	John Coles Symes, 31, Fenchurch-street
Roberts, Harry Dawson . . .	William Mosson Kearns, Red Lion-square
Rogers, Henry . . .	Thomas Rogers, Helston
Royle, Samuel . . .	William Joynson, Manchester
Rennacles, Anthony . . .	Edward Henry Richards, 29, Lincoln's-inn-fields
Shuttleworth, Thomas . . .	William Sale, Manchester
Smale, Charles, jun.t . . .	Charles Smale, sen., Bideford
Smith, Samuel Pearman . . .	Samuel Smith, Wallsall
Spofforth, Markham . . .	George England, Howden
Spofforth, Samuel . . .	Joseph Blanchard|Burland, South Cave; Edward Cleathing Bell, Hull
Sprott, James, B.A. . . .	Richard Raven, 2, King's Bench-walk, Temple
Sumners, John Buroese . . .	Robert Lanning, Pembroke
Swithenbank, John . . .	James Bradley, Leeds; Marmaduke Foster, Bradford; George Allen— by Rushworth, 10, Staple-inn
Teale, John . . .	Thomas Dennis Peacock, Bedale; Charles Thomas Herving, Bedale
Tooke, Edward . . .	Edward Dyne, Bruton
Turnbull, Richard Carr . . .	Henry Gregson, Lancaster
Wade, Charles Martin . . .	Sperling and Harris, Halstead
Watson, William . . .	James Iveson, Hedon
Watts, William . . .	John Wadsworth, Nottingham
Whately, George Hamilton . . .	George Rooper, 68, Lincoln's-inn-fields
Wheatley Thomas . . .	William Stanley Masterman, Wine Office Court, Fleet-street
White, Charles . . .	William Mark Fladgate, 43, Craven-street, Strand
White, William Edward . . .	William Enfield, Nottingham
Wilmshurst, George . . .	Robert Arnold Wainwright, 6, New-square, Lincoln's-inn
Wood, William . . .	Charles Wood, Manchester
Wool, Richard . . .	Edward Thomas, Worcester
Wynne, William . . .	Mark Lambert Jobling, Newcastle-on-Tyne
Young, Charles Wagrin . . .	Henry Young, 12, Essex-street

NOTES OF THE WEEK.

VENTILATION OF THE COURTS.

THE Exchequer Chamber being occupied on the 7th instant by Sittings in Error, the Barons of the Exchequer proposed to hold their Sittings in *Bence* in the Bail Court, as on former occasions of a similar difficulty. Their Lordships accordingly proceeded to take their seats at the usual hour, but they had scarcely entered the Court before they one and all exclaimed against an intolerable stench.

The Lord Chief Baron proposed that the Court should adjourn to the Vice-Chancellor's Court, and proceeded to that building. On his return, his lordship reported that the building in question was open, but the passage to it was intricate, and it was excessively cold.

The Court, being apparently reconciled to a patient endurance of the evil complained of, proceeded to business, but after some time the Chief Baron said,—It is certainly quite impossible to sit here; and the best thing we can do is to sit in the Vice-Chancellors' Court till the chamber is disengaged. This state of things is quite disgraceful, and I think that our complaints ought to be made public.

The Bench and Bar, masters and attorneys, reporters and spectators, all thereupon rose, and went at once from the polluted court—"into Chancery," as the lesser of two evils.

We trust this crying grievance will lead to an early consideration of the removal of the Courts to the law district.

LORD DENMAN'S HEALTH.

We are gratified to be able to announce that Lord Denman's health is so much re-established that he drove down to Westminster Hall on Wednesday last, and communicated with some of the other judges of the Queen's Bench. His lordship did not on this occasion take his place on the bench; but it is now expected that if his recovery progresses as it has recently done, his lordship will be enabled to share the labours of the Midland Circuit with Mr. Baron Parke.

ALTERATION OF PETITION DAY IN VICE-CHANCELLOR BRUCE'S COURT.

On Thursday morning the 7th inst., Vice-Chancellor Bruce addressed the Bar as follows:—"Mr. Colville has made a communication to me, which I think it is better to communicate to the Bar. He says, that for certain reasons,—no doubt, they are good ones,—it will be a matter of convenience to the office if the petitions and the causes which are generally taken on Friday, should, in future, be appointed for the Saturday. I do not quite understand the reasons which have been given to me, but I am quite sure they are good. I intend, therefore, acting upon Mr. Colville's suggestion, that it should be so in future."

RUMOURED PROMOTIONS.

We understand that the promotions to the office of Queen's Counsel, announced in the daily newspapers, are at least premature. The individuals who were said to have had the honour of silk gowns conferred on them, we have reason to think, have as yet had no communication from the Lord Chancellor on the subject.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Whitworth v. Whyddon. Jan. 11, 1850.

RECEIVER.—SUIT IN ECCLESIASTICAL COURT.

Held, affirming the decree of the Vice-Chancellor of England, that a receiver will not be appointed pending a suit in the Ecclesiastical Court, where the amount of property of the testatrix was small and the defendant's responsibility was not questioned.

THIS was a motion for a receiver on behalf of the next of kin of Elizabeth Whitworth, of Northampton, who was seized with the cholera whilst staying at the defendant's, in Exeter, and died shortly afterwards. It appeared that the defendant called in his own solicitor, and gave him instructions for a will, and that the deceased signed it, the defendant being appointed executor, and the property given one half to the defendant's wife and the other to a lady at Northampton. A suit as to the validity of the will having been instituted in the Ecclesiastical Court, the plaintiffs applied to the Vice-Chancellor of England for a receiver. There appeared to be about 120*l.* in money, and certain apparel and trinkets in the defendant's hands, and there were also a mortgage and some gas shares, in which, however, the deceased's brother was a trustee. The application having been refused, this appeal was presented.

Makins and Schomberg for the appellants: *Rolt and Follett* for the respondent.

The Lord Chancellor said, that the property in the defendant's hands was of so small an amount, and it was not suggested that the defendant was not a responsible party, and the motion had been rightly refused. As to the mortgage and gas shares, it appeared the brother was trustee, and they did not therefore require protection. The plaintiff, however, may apply again to the Vice-Chancellor if a stronger case were made out.

Padley v. Lincoln Waterworks Company and another. Jan. 16, 1850.

ANSWER.—SUFFICIENCY.—ARBITRATOR.—GROUNDS OF AWARD.

Held, affirming the decision of the Vice-Chancellor Knight Bruce, that as the interrogatories requiring the date of the award by the arbitrator, who was made a defendant in a suit to impeach the award, on the ground of fraud and collusion, were material to such charges, the defendant was bound to answer thereon.

Bacon and Glassey appeared in support of an appeal from the Vice-Chancellor Knight Bruce, (see vol. 39, p. 186,) who had allowed the exceptions for insufficiency to the answer of one of the defendants, *Mr. Hawkeley*, refusing to answer as to the grounds of his award in an

arbitration between the plaintiff and the company.

Wigram and Hallett, for the respondent, were not called on.

The Lord Chancellor affirmed the decision of the Court below, with costs. The defendant had not pleaded to the bill, and as he could not demur, the interrogatories being material to the charge of fraud and collusion, he must answer them. The appellant must also pay the costs incurred by the respondent of a motion for further time to answer, or that the appeal should be advanced.

Fuller v. Bennett. Jan. 17, 18, 1850.

SOLICITOR ACTING AS AGENT IN RECEIVING RENTS.—INTEREST ON ADVANCES.—CONTRACT, EXPRESS OR IMPLIED.

Held, affirming the decision of the Vice-Chancellor Wigram, that a solicitor acting as agent in receiving rents and making advances to his principal, is not, without a contract either express or implied from the dealings between the parties, entitled to charge interest on such advances.

MESSRS. CHITTY and Co., solicitors of Shaftesbury, had at times made advances to the late Sir John Dillon, and at other times held in their hands moneys belonging to their client, on account of rents received by them. Upon the settlement of the accounts it appeared that a sum was due to *Messrs. Chitty*, which was secured on the estates. Upon the purchase of these estates by the defendant, the accounts were referred to the Master, who had disallowed the claim of interest as between the agents and principal, there being no express agreement. Upon exceptions, the Vice-Chancellor Wigram had confirmed the report, whereupon this appeal was presented.

The *Solicitor-General* and *Sidgbottom*, for the appellant; *Temple and H. Clarke*, for the respondents.

The Lord Chancellor, after taking time to look at the correspondence, said, that there was nothing therein to show any contract for the payment of interest on the advances, either express or implied. On the contrary, in some of the letters Sir John Dillon complained of the sums entered against him, and said, the balance ought to be in his favour; and it was therefore unnecessary, after objecting to the general balances altogether, to enter into particulars as to the sums set down for interest. To entitle a solicitor or agent to interest on moneys advanced to or for their principals, there must be some distinct contract or some dealing from which it might be inferred. The appeal would be dismissed with costs.

Feb. 6.—*Grand Junction Canal Company v. Dimes*—Motion refused to discharge defendant from custody.

— 7, 8.—*Heathcote v. North Staffordshire Railway Company*—Cur. ad. vult.

— 8.—*Cross v. Sprigg*—Stand over.

— 9.—*Bagshaw v. Eastern Union Railway Company*—Appeal from the Vice-Chancellor Wigram, dismissed with costs.

— 9, 11.—*Bagshaw v. M'Niel*—Appeal dismissed with costs from Vice-Chancellor Wigram.

— 9, 11.—*Padbury v. Clarke*—Cur. ad. vult.

— 6, 11, 12.—*Sanderson v. Worthington and Cockermouth Railway Company*—Appeal dismissed from the Master of the Rolls.

— 12.—*Ex parte Young, in re Bishop*—Order on Secretary of Bankrupts to seal proceedings anterior to October 1, when the 12 & 13 Vict. c. 106, came into operation.

— 12.—*Adams v. Blackwall Railway Company*—Part heard.

Master of the Rolls.

Gregory v. Marychurch. Jan. 18, 1850.

INTERROGATORIES.—CREDITOR'S SUIT.

Upon exceptions to the Master's report disallowing certain interrogatories exhibited by the plaintiff in a creditor's suit, held, that as they were not leading, they were properly exhibited.

THIS was a creditor's suit by Barnard Gregory, on behalf of the creditors of David Davies, deceased, against the widow, Elizabeth Marychurch, and others, and prayed a declaration that the plaintiff was entitled to be admitted as a creditor against the estate, which the defendants by their answer contended was not liable. The Master having disallowed certain interrogatories exhibited by the plaintiff for the examination of witnesses, these exceptions were presented.

Beale in support; *Shebbeare* contra.

The Master of the Rolls said, that as the interrogatories were not leading, the exceptions must be allowed.

Feb. 7.—*Hargrave v. Hargrave*—Leave to plaintiff to proceed to trial of issue at law.

— 8.—*Gossett v. Vivian*—Part heard.

— 8.—*Oldfield v. Cobbett*—Motion refused.

— 2.—*Blenkinsopp v. Blenkinsopp* and others—Deed to be set aside as fraudulent, and alimony directed to be paid.

Vice-Chancellor of England.

In re Jermy. Jan. 18, 1850.

GUARDIAN.—INFANT.—REFERENCE.

A reference was directed as to the appointment of a guardian to an infant, where one of the executors of the will under which she was entitled, was dead, and the other had renounced, and letters of administra-

tion had been taken out by the infant's sister, who was also a minor.

THIS petition was presented by the infant daughter of Mr. Jermy, the late Recorder of Norwich, that the daughter who had taken out letters of administration to the deceased should carry out the trusts of the will for maintenance in regard to the petitioner, or for the appointment of a guardian. It appeared that upon the death of Mr. Jermy's son, and upon the other party, who had been appointed executors of the will, renouncing, one of the daughters administered.

Bird, in support.

The Vice-Chancellor said, that there must be a reference to the Master to appoint a guardian, as the personal trust confided by the testator in his executors ceased with their death or renouncing the trusts.

Feb. 6.—*Bennett v. Boerill*—Motion granted to take bill off the file.

— 7.—*King of the Two Sicilies v. Peninsular and Oriental Steam Packet Company*—Demurrer to bill overruled with costs.

— 9.—*In re Wilkes' Charity*—Trustees directed to re-elect trustees, with costs.

— 9.—*Burgess v. Home*—Injunction dissolved with costs.

— 12.—*Priestley v. Atkinson*—Stand over.

Vice-Chancellor Knight Bruce.

Jones v. Lewis. Jan. 18, 1850.

RE-INVESTMENT OF MONIES PAID INTO COURT UNDER 6 & 7 W. 4, G. 79.—COSTS.

*The costs of a fourth investment of a sum of 15,500*l.*, part of the purchase money paid by the Trinity House into Court, under the 6 & 7 Wm. 4, c. 79, for the purchase of the Skerries lighthouse, was directed to be borne by the fund and not by the corporation of the Trinity House.*

UPON the purchase for 444,984*l.* 11*s.* of the Skerries lighthouse by the corporation of the Trinity House, under the provisions of the 6 & 7 Wm. 4, c. 79, part of the purchase money amounting to 141,660*l.* was paid into Court, and carried to the account of the Trinity House and Jones. Three investments had been already made, the costs of the third having been ordered to be paid out of the fund. It being proposed to lay out 15,000*l.* in the purchase of an estate in Wales, and the Master having reported in favour of the purchase, this petition was presented to confirm the report, and that the corporation of Trinity House might pay the costs of the investment.

Bacon and *Pitman*, in support, cited *Ex parte Bowdler*, 4 Rail. Ca. 229; *In re Merchant Tailors' Company*, 10 Beav. 485.

Wigram contra.

The Vice-Chancellor confirmed the Master's report, and said, that the corporation could not be called on to pay more than their own costs, although the power of re-investment had not been exhaustively used, but there must be some limit to the number of such investments.

Dakin v. London and North-Western Railway Company. Jan. 24, 1850.

CASE FOR OPINION OF COURT OF LAW.—
OPPOSED MOTION.

A case was directed for the opinion of a Court of Law on motion, although opposed by the defendants.

Mains and Glasse, for the plaintiff, moved that a case should be directed to a court of law in this cause, which was for an injunction to restrain the defendants from taking one part of the plaintiff's property without the other, citing *Rigby v. Great Western Railway Company*, 2 Phill. 44; *Brocklebank v. Whitehaven Junction Railway Company*, 15 Sim. 632.

Bacon and Speed for the company, contra.

The Vice-Chancellor said, that, upon the authority of the cases cited at bar, the case would be directed, although without consent.

In re Eastern Counties Junction and Southend Railway Company. Jan 26, 1850.

ABORTIVE RAILWAY COMPANY.—WINDING UP.

An order was made for the dissolution and winding up of an abortive railway company, upon the petition of a provisional committee-man, who had been sued for, and had paid the bill of costs of the company's solicitor, although he had neither been allotted any shares nor signed the deed of settlement.

THIS was a petition under the 11 & 12 Vict. c. 45, as amended by the 12 & 13 Vict. c. 108, for the dissolution and winding up of this company which had proved abortive, on behalf of a provisional committee-man, who had been sued by the solicitor for, and had paid, 300*l.*, the amount of the bill of costs incurred in carrying on the scheme. It appeared that no shares had been allotted to the petitioner, nor had he executed the deed of settlement.

Bacon and *W. T. S. Daniel* in support of the petition, which was opposed by *Lloyd* and *Jessel*.

The Vice-Chancellor made the order as prayed.

Feb. 7.—*Cooper v. Earl Powis*—Demurrer for want of parties, allowed without costs,—leave to amend.

—9.—*In re Hemp and Flax Company*—Order for Winding up.

—9.—*In re Tring and Reigate Railway Company*—The like.

—9.—*Dinning v. Henderson*—Petition dismissed for the Master to review his report, deducting income tax from a creditor's claim.

—9, 11.—*In re Vale of Neath and South Wales Brewery Company*—Motion on behalf of official manager to insert name on list of contributories without qualification, refused. Costs to come out of the estate.

—11.—*Cowper v. Earl Powis*—Motion for injunction refused, with costs reserved.

—12.—*Attorney-General v. Vint*—Judgment on construction of will.

Vice-Chancellor Wigram.

Winthrop v. Murray. Jan. 23, 25, 1850.

WARRANT OF ATTORNEY.—DEFEASANCE.—
INJUNCTION TO RESTRAIN EXECUTION.

Where a warrant of attorney was given further to secure the payment of moneys advanced at the plaintiff's request, and the defeasance provided that judgment might be entered and execution issued on default of payment of the premiums of a policy of insurance, which was also given by way of security: an injunction was dismissed with costs to restrain execution, where the policy had been forfeited by nonpayment of the premiums, although the creditor had at the expiration of four days procured a renewal of the policy by payment of such premiums.

THIS bill was filed for an injunction to restrain the defendant, Mr. Murray, from issuing execution against the plaintiff for 2,700*l.* and interest, under a warrant of attorney, which had been given by the plaintiffs further to secure the payment of 2,700*l.*, advanced by Mr. Murray at the request of the plaintiffs and the other defendants, co-directors of the Universal Salvage Company, for the use of the company. The money had been advanced on the security of the joint and several bonds of the directors, and on default being made in the payment, the debt was agreed to be secured by a policy for 5,000*l.* on the life of defendant, Watson, the creditor, in the Hand-in-Hard Assurance Office, and the warrant of attorney was also given, but judgment was not to be entered up or execution issued until default made in payment of the premiums, in which case Mr. Murray might renew the policy or pay the premiums at their expense. The policy was effected on the 4th August, 1846, but the premium falling due on the 24th June, 1847, according to the custom of the office, not having been paid, the policy expired on the 24th July, and Mr. Murray renewed the policy four days afterwards, and entered up judgment.

The Solicitor-General and Elderton for the plaintiffs; *W. W. Cooper* and *H. C. Jones* for some of the defendants, in support of the injunction; *Wood* and *Glasse* for Mr. Murray.

The Vice-Chancellor, after taking time to consider, said, that it was not shown Mr. Murray had misled the plaintiffs as to the custom of the insurance office in requiring payment of the premiums on the 24th June; and as the policy had been allowed to expire, the danger against which the parties had intended to provide had actually taken place, and the circumstance that he had prevailed on the office to renew the policy, did not avoid the right he would otherwise have undoubtedly had to issue execution. The bill must therefore be dismissed without costs as to the other defendants, but with costs as to the defendant Murray, to be taxed and paid out of the fund in Court, and the residue to be paid in satisfaction of the judgment.

Feb. 7.—*Price v. Griffiths*—Bill for specific performance, dismissed with costs.

— 7.—*Beckett v. Bulbrough*—Order for payment of purchase money of certificates of 10 railway shares to the holder, who had purchased from the allottee.

— 9.—*In re Rumington's Will*—Stand over.

— 11.—*Elsey v. Lutysens*—Stand over to bring action at law.

— 12.—*Stoney v. Stoney*—Decree for dower with costs.

— 12.—*Johnson v. Johnson*—Part heard.

Queen's Bench.

Hoare v. Coupland. Jan. 14, 25, 1850.

PLAINTIFF SUING IN FORMA PAUPERIS.—SIGNING JUDGMENT.—FEES OF COURT.

Held, that a plaintiff suing in *forma pauperis* is not compellable to pay fees before judgment is signed, although a verdict has been obtained for more than 5*l.*

Quære, whether after judgment is signed such fees are payable on subsequent proceedings in the cause?

In an action for libel by a plaintiff suing in *forma pauperis*, a verdict was obtained with 50*l.* damages, and application was made to the Master to sign judgment *gratis*. The Master, however, refused, without the usual fee of 8*s.*, on the ground that as the plaintiff had recovered damages amounting to more than 5*l.*, she was liable to pay the Court fees.

Carter now applied for a rule on the Master to sign judgment *gratis*.

The Court, after taking time to consider, held, that a plaintiff suing in *forma pauperis*, was entitled to have judgment signed without payment of fees. A question might, however, arise, if judgment were signed, whether fees would not be payable in the subsequent proceedings consequent on the bill of exceptions which had been tendered and was not yet decided.

Doe dem. Howe v. Thornton. Jan. 21, 1850.

MOTION FOR NEW TRIAL AFTER FIRST FOUR DAYS OF TERM.—NOTICE TO PLAINTIFFS.—PRACTICE.

Upon showing cause against a rule nisi, to set aside a verdict for the plaintiff, and for a new trial, held, that as no notice had been given to the plaintiff of leave to move after the expiration of the first four days of term, the omission was fatal and the rule was discharged.

A RULE nisi had been obtained to set aside the verdict obtained for the plaintiff, and for a new trial in this case, which was an action of ejectment to recover possession of certain premises at Hampton, in Devonshire, which had been left to the defendants as trustees, to apply the proceeds in publishing the works of Johanna Southcote.

Leach showed cause. Although leave had been obtained to move for the rule after the first four days of term, no notice had been given to

the plaintiffs, and they had accordingly signed judgment, and the rule must therefore be discharged.

Cox and Wise in support of the rule, contra. The Court, however, held, that as no notice had been given to the plaintiffs, the rule must be discharged.

Feb. 11.—*Ray v. Chapman and another*—On special case, judgment for the defendant.

— 12.—*Adams v. Andrewes and another*—Cur. ad. vult.

Queen's Bench Practice Court.

(Coram Mr. Justice Brie.)

Esparte Gomeril, in re Padwick. Jan. 16, 31, 1850.

ATTORNEY.—MORTGAGE.—PROCURATION MONEY.—TAXATION.—COSTS.

A rule was made absolute for the Master to review his taxation of a bill of costs, where procuration money had been allowed in a negotiation for an advance on mortgage, and the matter was broken off.

A RULE nisi had been obtained on Jan. 16, by Sir John Bayley, for the Master to review his taxation of the bill of costs of Mr. Hy. Padwick, an attorney, of Horsham. It appeared that a Mr. Gomeril had employed Mr. Padwick as his solicitor, and that on 6th August last he applied to the latter to procure an advance of 15,000*l.* on mortgage, for the purposes of his marriage settlement on the following day, and a Mr. Hitchcock agreed to furnish the money. Mr. Gomeril then went to Messrs. Hall, the solicitors for his grandfather, to obtain the title deeds, when they advised him not to raise the money on mortgage, but to charge therewith certain moneys in the Court of Chancery arising from his grandfather's personality, and he accordingly wrote to Mr. Padwick to decline the advance. Upon the transfer by Mr. Gomeril of his business to Messrs. Hall, in the latter end of August, Mr. Padwick sent in his bill, charging 50*l.* 19*s.* 2*d.*, for preparing the mortgage, &c. and 37*l.* 10*s.* procuration money, together with 300*l.*, which he alleged to have paid to Mr. Hitchcock, in order to induce him to advance the money on such short notice.

Martin showed cause against the rule, which was supported by the Attorney-General.

The Court made the rule absolute.

Feb. 6.—*Marsh v. Land*—Writ of *sci. fa.* amended on payment of costs.

— 6.—*Tull v. Tull*—Part heard.

Court of Common Pleas.

Nevone v. Hadden and another. Jan. 23, 24, 1850.

MARINE INSURANCE.—TOTAL OR PARTIAL LOSS.

On special case held, that a plaintiff is not entitled to recover on a policy of insurance against total loss, and excepting the case

of an average one, of the freight of a ship, consisting of bales of silk, where a portion of the bales only have been rendered unmarketable, and the remainder might have been sent to England within a reasonable time and at a reasonable expense.

THIS was a special case for the opinion of the Court, whether the facts stated showed a total or only a partial loss. The action was brought on a policy of insurance against total loss, and excepted the case of an average loss, by the Neptune Marine Assurance Company, on the freight of the ship *Wanderer*, consisting of 81 bales of silk imported by the plaintiff from Leghorn to England. It appeared that owing to stress of weather the ship was obliged to put into Gibraltar, and that upon examination of the cargo, 23 of the bales of silk were so much damaged as to lose its merchantable character, and they were accordingly sold by auction, and this action was brought as for a total loss.

Barstow, for the plaintiff, contended that this amounted to a total loss, citing *Roux v. Salvador*, 4 Scott, 1; 3 Bing., N. O. 266.

Martin, contra, was not heard.

The Court said, that as the greater part of the silk might have been sent over to England in another vessel and at a reasonable expense, and within a reasonable time, the plaintiff had only sustained a partial loss, and that, therefore, he was not entitled to recover under the policy which expressly excepted the case of an average or partial loss, and the verdict must be entered for the defendants.

Feb. 11.—*Robinson and wife v. Marquis of Bristol*—Rule absolute.

— 11.—*Kidgell v. Mon*—Rule to arrest judgment discharged.

— 12.—*Maurice v. Marsden*—Rule discharged to reduce verdict.

— 12.—*Johnson and another v. Lord Huntingfield and another*—Rule discharged for new trial.

Court of Exchequer.

Atkinson v. Kinnear. Jan. 17, 1850.

SURGEON.—RESTRAINT OF PRACTICE WITHIN TWO-AND-A-HALF MILES.

Held, that a covenant by a surgeon not to practise within two-and-a-half miles of the place of business, the good-will of which was sold to the plaintiff, was not void as in restraint of trade; and that such distance must be computed by the nearest public way.

THIS was a motion for a new trial on the ground of misdirection, or to reduce the damages to 1s. pursuant to leave reserved, or in arrest of judgment. The action was brought to recover the sum of 1,000*l.* as liquidated damages upon a covenant by the defendant, in a deed of partnership, not to carry on the business of a surgeon within two-and-a-half miles of the plaintiff, who had purchased the defendant's business as a surgeon, in Dorset

Crescent, Finsbury Square, and the breach alleged was, that the defendant had practised his profession at 44, Trinity Square. At the trial on the 12th January last, before Rolfe, B., the learned judge directed the jury that the words in the covenant meant the nearest public way, and reserved leave for the defendant to move to enter the verdict for 1s. if the Court were of opinion that the action should be as for a penalty and not for liquidated damages.

Hurlstone, in support, contended that the route taken by the principal omnibuses and carriage traffic was the usual way, which would make the distance beyond the two-and-a-half miles. The 1,000*l.* was a penalty, though it was called liquidated damages in the partnership deed, and besides the covenant was illegal as being in restriction of trade: citing *Kemble v. Farren*, 6 Bing. 141; 3 M. & P. 425; *Galsworthy v. Strutt*, 1 Exch. R. 659; *Horne v. Flintoff*, 9 M. & W. 678; *Boys v. Ansell*, 5 Bing., N. C. 390; 7 Scott, 364; *Beckham v. Drake*, 8 M. & W. 846.

The Court said, the stipulation not to practise within the two-and-a-half miles was a very fair and reasonable one, as the practice, which the defendant had disposed of to the plaintiff for a valuable consideration, might be rendered worthless by the defendants' interfering therewith, and that distance was to be computed by the nearest public way. The parties had stipulated that the amount of damages for an infringement of the covenants should be 1,000*l.*, and although the damages so arising were uncertain, yet they had agreed to call them "liquidated damages," and there was no reason to treat them as a penalty. The rule was therefore refused.

Feb. 7.—*Nottidge v. Ripley*—Rule absolute for new trial on payment of costs, otherwise to be discharged.

— 7.—*Glover v. London and North Western Railway Company*—Rule absolute for nonsuit.

— 8.—*Ryder v. Mills*—On special case, conviction under the Factory Act quashed.

— 9.—*Grieve v. Milton*—Rule absolute for new trial.

— 9.—*Earl v. Miller*—Stand over.

— 11.—*Carr v. Mostyn*—On special case, judgment for the defendant.

— 11.—*Earnshaw v. Leigh*—On demurrer to declaration, judgment for defendant.

— 12.—*Brookes v. Rookes*—Rule absolute for new trial on payment of costs.

— 12.—*Catto and others v. Sothern*—Rule discharged for new trial.

— 12.—*Spottiswoode v. Barrow and another*—Rule absolute for new trial.

Court of Exchequer Chamber.

Feb. 7.—*De Beauvoir v. Owen*—Judgment of the Court of Exchequer affirmed.

— 7.—*Ashpital v. Sercombe*—Judgment of the Court of Exchequer affirmed.

— 8, 9.—*Edmonds v. Midland Great Western Railway Company of Ireland*—Part heard.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Sittings after Hilary Term, 1850.

AT LINCOLN'S INN.

Lord Chancellor.

APPEALS.

S. O., Purchase v. Shaffis, appeal.
S. O., Att.-Gen. v. Gibbs, Rock v. Ditto, appeal.
S. O., Miller v. Priddon, appeal.
Cross v. Sprigg, appeal.
S. O., Dawson v. Hinchman, appeal.
 Bagshaw v. McNeil, appeal.
 Padbury v. Clarke, appeal.
 Attorney-General v. Pilgrina, appeal.
 Coleman v. Mellersh, appeal.
 Adams v. Blackwall, appeal.
 Hirst v. Tolson, appeal.
 Tomlinson v. Troughton, Haydock v. Tomlinson, appeal.
 Weaver v. Grant, 2 appeals.
 Waring v. the Manchester, Sheffield, and Lincolnshire Railway Company, appeal.
 Coleman v. Malters, appeal.
 Hughes v. Williams, appeal.
 Walsh v. Trevanion, 4 causes, appeal.
 Price v. Berrington, 3 causes, 2 appeals.
 Williamson v. Gordon, appeal.
 Benyon v. Nettlefold, appeal.
 Hutehins v. Teycheune, appeal.
 Short v. Mercier, appeal.
 Fowler v. Reynal, appeal.
 Miller v. Huddlestons, appeal.
 Wilkinson v. Godson, appeal.
 Yates v. Maddam, appeal.
 Innes v. Sayer, appeal.
 Menzies v. Connor, 2 appeals.
 Hickling v. Bover, appeal.
 Rowland v. Witherden, appeal.
 Myers v. Perigal, appeal.
 Pearson v. Goulden, appeal.
 Pearson v. Beck, appeal.
 Pearson v. Hulme, appeal.
 Pearson v. Oldham, appeal.
 Watkins v. Williams, Howard v. Church, appeal.
 Emmett v. Dewhurst, appeal.
 Briggs v. Penny, appeal.
 Hickman v. Hickman, appeal.
 Redick v. Gandell, appeal.
 Robinson v. Geldart, appeal.
 Salmon v. Dean, appeal.
 Smith v. Pincombe, appeal.
 Vivian v. Cochrane, appeal.
 Sturge v. Sturge, appeal.
 Pelly v. Watlen, appeal.
 8th Feb., Shephard v. Shepherd, appeal.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Bates v. Beckhouse, demurrer.
 Tynte v. Baker, ditto.
 Fairborne v. Davis, plea.
 Neasham v. Esdaile, dem.
 Deeks v. Bell, ditto.
 Robotham v. Amplett, fur. dirs.
 James v. Jones.
 Easter Tm., Parkyn v. Cape.
 Stammers v. Hatfield, fur. dirs. and costs.
 Ditto v. Sturges, cause by order.
 Dean v. Bates, fur. dirs. and costs.
 Fairhurst v. Malcolms, exons.
 Freeman v. Norton.
 Mason (pauper) v. Wakeman.

Bell v. Rea, Rea v. Bell.
 Holbeck (pauper) v. Holbeck.
 Attorney-General v. Adams.
 Bignold v. Yeo.
 Galland v. Watson, 3 causes, fur. dirs. and costs.
 Gifford v. Pryor.
 Spilling v. Sims, fur. dirs. & costs.
 A. Fletcher v. Moore, ditto.
 Branch v. Bank of England, ditto.
 Bird v. Smith.
 Enderby v. Gunter.
 Wilkinson v. Hartly, exons. and fur. dirs.
 Jones v. Parry.
 Green v. Wallis.
 Padwick v. Hanalip.
 Mayor of Berwick v. Murray.
 Fletcher v. Rumaden.
 Langdon v. Woods, fur. dirs. and costs.
 Gardner v. Williams.
 Devey v. Fisher.
 Roe v. Gootheridge, pro confesso.
 Bryant v. Bryant, fur. dirs. and costs.
 Sergison v. Sergison, ditto.
 Foster v. Greaves, Foster v. Foster.
 Watson v. Boothby.
 Wright v. Bell.
 Trant v. Daffell, fur. dirs.
 Porter v. Simson.
 Paterson v. Scott, fur. dirs. and costs.
 Cooper v. France.
 Hatherell v. Baylis.
 Onyon v. Washbourn.
 Staines v. Bourne.
 Short, Cartis v. Cotton, Ditto v. Beare.
 Duke of Leeds v. Earl Amherst, exons.
 Haynes v. Barton.
 Ashton v. Jones.
 Beebe v. Stirton, fur. dirs. and costs.
 Heathcote v. Wyndham.
 Eckford v. Rooms, 2 causes.
 Ellis Fletcher v. Moore.
 Norman v. Hammack.
 Hyde v. Neate, fur. dirs. and costs.
 Short, Lloyd v. Lloyd.
 Jenkins v. Haynes, fur. dirs. and costs.
 Attorney-General v. Bishop of St. David's, 6 causes, fur. dirs.
 Pepper v. Decker, fur. dirs. and costs.
 Waters v. Myan.
 Bustow v. Needham, exons.
 Attorney-General v. Lambard.
 Att.-Gen. v. Earl of Lichfield, fur. dirs. and costs.
 Drysdale v. Carter.
 Hildcourt v. Widdrington.
 Boyes v. Brown.
 Attorney-General v. Badger.
 Graham v. Lyon.
 West v. Jones.
 Boileau v. Crane.
 Turner v. Larkin, fur. dirs. and petition.
 Smart v. Long.
 Flint v. Gaunt.
 Ashburner v. Wilson.
 Dyna v. Costabadie.
 Maclean v. Babington.
 Rogers v. Hale.
 Jarvis v. Bullas, fur. dirs.
 Jefferies v. Jefferies, ditto.
 Fosbrooke v. Woodcock.
 Reid v. Worley, fur. dirs.
 Swann v. Easton, fur. dirs.
 Thornhill v. Mannidg.
 Shard v. Lee, fur. dirs. and costs.

Thornton v. Ellis.
 Short, Parker v. Parker.
 Stephens v. Jones.
 Elias v. Birkhead.
 Hayward v. Townsend.
 Macpherson v. Macpherson.
 Pallenden v. Church.
 Novell v. Haworth.
 Short, Boucher v. Boucher, fur. dirs. and costs.
 Uttermare v. Stevens.
 Smallpiece v. Graham.
 Mobony v. Galloway.
 Peto v. Bryan, fur. dirs. and costs.
 Simmons v. Rudall, 3 causes.
 Robinson v. Hedger.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Winder v. Abbott, exons.
Easter Term, Stanley v. Bulkeley.
 19th Feb. Edgson, v. Edgson, 3 causes.
 Staveley v. Hutchinson.
 Quick v. Clayton.
 Sander v. Sander, fur. dirs. and costs.
 Symons v. James, fur. dirs. and partn.
 Gee v. Mayor, &c. of Manchester.
 Attorney-General v. Vint.
 Ormerod v. Parkinson.
 Jennings v. Lloyd.
 Ladbroke v. Lee.
 Strong v. Strong.
 Fagg v. Smith.
 Thomas v. Davies.
 Wyke v. Rogers.
 Hughes v. Paramore, ditto, v. Wolsey.
 Sadler v. French.
 Johnson v. Shrapnell.
 Davies v. Mussett.
 Lock v. Mayor, &c., of Weymouth.
 Beasley v. Clark.
 Popham v. Great Western Railway Company.
 Munday v. Padwick, 3 causes.
 Sibberring v. Earl Balcarres.
 Peers v. Sneyd.
 Green v. Gleaves, fur. dirs. and costs.
 Davall v. New River Company, ditto and cause.
 25th Feb., Alexander v. Cane.
 Ditto, Burbidge v. Burbidge.
 Tyson v. Tyson, fur. dirs. and costs.
 James v. Talbot, exons. and fur. dirs.
 25th Feb., Thorne v. Harper.
 Smale v. Graves, exons.
 Eccles v. Birkett, fur. dirs. and cause.
 28th Feb., Gatty v. Gatty.
 Thornhill v. Greame.
 28th Feb., Parker v. The Sheffield, &c. Rail. Co.
 28th Ditto, Butler (pauper) v. Gardiner.
 Short, Eddy v. Eddy.
 Ditto, Hurrell v. Hurrell.
 Fitch v. Friend, fur. dirs. and costs.
 1st March, Deakin v. Beardmore.
 Reeve v. Reeve.
 2nd March, Brome v. Corke.
 Ditto, Thompson v. Thompson.
 Short, Laidler v. Ratcliffe, fur. dirs. and costs.
 Ditto, Carlon v. Biers, 2 causes.
 Tapscombe v. Newcombe, fur. dirs. and costs.
 Short, Nichols v. Morgan.
 4th March, Hewett v. Snare.
 Ditto, Randall v. Hall.
 King v. Meinigen.
 Whitmarsh v. Smith, exons.
 De Havilland v. Lord De Saumarez, fur. dirs.
 Short, Moss v. Wainwright.

Hawkes v. Eastern Counties Railway Company.
 Wood v. Pennell.

Short, Wright v. Johnson.

Causes transferred from VICE-CHANCELLOR OF ENGLAND, by order.

Burns v. Earl of Ranfurly.
 Fog Hagub, 2 causes.
 Savage v. Savage, exons. Ditto, v. Ditto, fur. dirs. and costs.
 Hardcastle v. Methley.
 Smith v. Bennett, Ditto v. Pennell.
 Seagrave v. Pope.
 Cooke v. Rich.
 Charlton v. Brittlebank.
 Herries v. Rainbott.
 Mortimer v. Mortimer.
 Runbury v. Jee.
 Roberts v. Bethwin.
 Myatt v. Price.
 Lewin v. Kellett.
 Newcombe v. Muir.
 Collinge v. Knight, 2 causes.
 Collinge v. Collinge, 2 causes.
 Campbell v. Houston.
 Trumpler v. Lockett.
 Baron Rosemore v. Mowatt.
 Deacon v. Cooke.
 Davies v. Proctor.

Vice-Chancellor Stigram.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Smith v. Smith, exons.
Easter T., Mence v. Bagster.
 S. O. G., Toulmin v. Copland.
 Stoney v. Stoney.
 S. O., Evans v. Pritchard.
 Johnson v. Johnson, Ditto v. Ditto.
 Savery v. Savery, Ditto v. Will, exons.
 Beckett v. Bilbrough, pt. hd.
 Beeching v. Morphew.
 Elsey v. Lutyens.
 Sharpe v. Sharpe, 6 causes, fur. dirs. and costs.
 Bishop v. Vickers, Ditto v. Stowers, ditto.
 Boreham v. Bignall, 3 causes, fur. dirs. and costs.
 18th Feb., O'Brien v. Baron Kenyon, Ditto v. Ditto.
 Jones v. How.
 Ingersoll v. Kendall, fur. dirs. and costs.
 Monro v. Taylor, fur. dirs. and exons.
 Sharp v. Taylor, Ditto v. Ditto, exons.
 Johns v. Dickinson.
 Ellis v. Cowne, fur. dirs. and costs.
 21st Feb., Hughes v. Powell.
 21st Ditto, Lewis v. Marsh.
 Short, Adams v. Adams, Ditto v. Holmes, fur. dirs. and petn.
 25th Feb., Missenden and another (pauper) v. Griffiths.
 26th Ditto, Morey v. Lambe.
 Murray v. Parker.
 Monypenny v. Monypenny, Ditto v. Dering, fur. dirs.
 Short, Bateman v. Donne.
 Ditto, Lucas v. Hoffman.
 Ditto, Burton v. Williams.
 Robinson v. Sheffield, Ditto v. Weir.
 Short, Wilbraham v. Capper, fur. dirs. and costs.
 Fuller v. Bennett, ditto.
 Short, Clarkson v. Hadley, 2 causes.
 Norton v. Hepworth, Ditto v. Ditto, exons.
 Dobson v. Land, Ditto v. Wilkinson, Ditto v. Weddall, exons. and fur. dirs.
 Donaldson v. Fairfax, fur. dirs. and costs.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, FEBRUARY 23, 1850.

CHANCERY REFORM.

THE subject of Chancery Reform, which has often been mooted in these pages, is now very prominently before both the public and the profession, and in this early stage of the session has engaged a large share of the attention of parliament. The question has been warmly debated on the bill introduced by the Solicitor-General "to simplify and improve the Proceedings in the High Court of Chancery in Ireland." It is remarkable that the experiment, on this extensive field of change in the jurisdiction of the Court, should first be attempted in Ireland, where a large part of the ordinary equitable jurisdiction of the Court has just been superseded by special Commissioners. The pressing evils of Irish Equity were supposed to be remedied by the new statute relating to Encumbered Estates, and the present bill comes with some surprise on the profession, as well in Dublin as in London.

The measure, however, is one of the first importance on both sides of the channel, for there can be no doubt that if success should attend the project in Ireland, it will be extended to England. Usually the course has been the other way: hitherto experiments have been tried here, and then extended to the sister island. It was indeed lately rumoured, that some of the "Four Courts" were to be removed to Westminster, but now the scene is reversed, and the Four Courts are to take the lead in the march of Law Reform. Let us examine, therefore, the project which is thus to be carried forward for our imitation. It may be briefly described as follows:—

1. The suitors may proceed by petition instead of bill, with power to the Court to direct a bill to be filed; and, at the peril of costs, the respondent may require the suit to be prosecuted in the ordinary way. The

petition may be verified on oath, and interrogatories annexed. The respondent may also file interrogatories to be answered by the petitioners.

2. The important power is given to petition for the opinion of the Court upon a special case.

3. The Court or Master may direct evidence to be taken *visd voce*, or by affidavit or on interrogatory.

4. The following classes of petitions may be referred summarily to the Master:

Administration of Estates of deceased Persons.

Foreclosure and Redemption of Mortgages.

The appointment of New Trustees.

The appointment of Guardians and Maintenance of Infants.

5. The Master to have the same jurisdiction as the Court in a suit. He may dispense with states of facts and regulate proceedings. His orders to take effect as orders of Court. He may make special reports or orders subject to confirmation.

In case of the illness of a Master another may act for him. The Masters to make rules for procedure.

6. Petitions may be presented to the Court for partial relief.

7. In cases of death, marriages, &c., the interest may be transmitted by supplemental petition or suggestion on the original petition without an order of revival or supplemental decree.

8. A petition to operate as a *lis pendens* under 7 & 8 Vict. c. 90, s. 10.

Such is the scope of the present plan of equity improvement. Many of our readers will recollect that in the year before last the Metropolitan and Provincial Law Association proposed some very extensive amendments in the Jurisdiction and Procedure in the Court of Chancery; and it is due to

that society to notice that almost all their principal suggestions have been adopted in the present bill. In the history of these changes in the law we may go farther back, and remind the profession that Mr. Pemberton, from his place in parliament in August, 1840, in his well-known speech on the re-commitment of the bill "for facilitating the Administration of Justice in Chancery," pointed out, with his usual force and clearness, the principal defects in equity procedure. He said, that complaints of the delays and expenses of the Court of Chancery were as old as the time of Swift, and he thus cites from that satirical writer :

"Gulliver, I think, tells us that amongst other subjects on which he was examined by the King of Brobdingnag, his majesty made inquiry about the Court of Chancery. 'Now,' says Gulliver, 'I happened to be particularly well qualified to give his Majesty information upon this point, my father having been totally ruined by a suit, in which, after twenty years litigation, he had obtained a decree in his favour with costs.' Yet at this time there was no great delay in the Judges of the Court, few causes appear to have been in arrears, and the delay must have been elsewhere."

The honourable and learned member very strikingly sets forth the consequences of this delay and expence;—

"I have a claim for 1,000*l.* which can be recovered only in Chancery. The debtor knows that I cannot possibly obtain a decree in less than three years, that he may probably be able to delay the original hearing much longer; that if it depends upon an account to be taken, however simple, he can withhold payment for more than twice that time, and an unascertained balance carries no interest. He knows, therefore, that it is worth my while to take half my just demand, rather than to wait for eight or nine years it may be, and recover the whole amount at the expence of extra costs, which I may have to pay, to an amount perhaps equal to the difference. He offers me therefore, as a fair compromise, in lieu of a present value to which I am entitled; the value of a reversionary interest, and if I am wise I shall accept it. But the delay not only occasions the resistance to just demands, it sometimes prevents the abandonment of claims which are unjust. A man files a bill in which he finds that he must ultimately be defeated, and be charged with the costs of the suit; but he knows that the death of either party may save him from the payment, because a suit cannot be revived for costs alone, and he therefore protracts the suit by all possible means, and takes the chance of one party, or the other dying in the long course of years through which he can extend the litigation."

This part of the delay has been much shortened.—Ed.

The effect on the amount of the business of the Court compared with the time of Lord Hardwick, was also pointed out by Mr. Pemberton. The number of bills filed a hundred years ago, was nearly as great as the present time, notwithstanding the increase of population, wealth, and commerce. We have not space at present to notice the remedies suggested by the eminent counsel to whose speech we refer, but they are principally the reduction of the number of parties and consequently of the number of counsel appearing for them, and the number of references to the Master. The latter grievance he thus illustrated:—

"A legacy is given to a class—for instance to the children of John Thompson—John Thompson and his wife are before the Court, and say we have six children, neither more nor less. The six children are present, and say here we are, all brothers and sisters. The executor or trustee is present, and says I have known the family all my life, there are six children, neither more nor less. A witness, or half-a-dozen witnesses, swear to the same thing—but all in vain. The Judge is incredulous—he says I must have this matter inquired into by the Master; and forthwith the cause is dispatched into Southampton Buildings. Here the point being one about which there is neither doubt nor dispute, about which all parties are agreed except the Judge—the inquiry occupies a comparatively short time—perhaps not above twelve months—particularly if the parties are fortunate enough to get into the office of my hon. and learned friend opposite, the member for Galway. The Master having looked into the evidence which was before the Court, and probably none other, is, of course, satisfied that John Thompson has six children, and no more; and upon his Report the Court is satisfied also. But the cause is to be set down again in the paper, and must wait its turn, and at the end of another two years, if fortunately no change happens in the interval to John Thompson's family, his children obtain their rights, having waited three years, and paid the expence of an inquiry and a double hearing, without the slightest advantage to any body."

For our part, if we could choose the course that we think reform ought to take, we should recommend,—1st. The abolition of the fees, which sooner or later must be given up; and, 2nd. A complete remodelling of the procedure in the Masters' offices. We are apprehensive that if the present defective system be continued in the Masters' offices, that the new business proposed to be carried thither, could not possibly be satisfactorily despatched. Mr. Pemberton, after paying due respect to the Masters, as honourable and conscientious men, observes, that "against their office,

more than any other, the opinion of the profession is directed to the Master. The system appears to be contrived to damp all energy. Which of the ordinary motives to exertion is left to operate on the minds of the Masters? Excluded in the recesses of their dark chambers, exempt from the control or reception of the Judges—relieved from the competition of the Bar—dependent of the opinion of the solicitors, and their proceedings, totally unknown to the public—acquiring no credit by diligence or ability—incurring neither loss nor censure by indolence or inattention—with nothing to hope and nothing to fear—can any men be placed in circumstances so unfavourable to exertion? Can it be expected that they should themselves perform the irksome duty of unremitting attention to subjects the most unattractive, or rigidly discharge the duty, perhaps still more irksome, of stimulating and compelling to constant activity the parties who attend them—the solicitors and their clerks—all affected, more or less, by the *genius loci*?"

He then describes the course of proceeding; and says,—

"Let any merchant or man of business consider how soon a long and intricate account, extending through a series of years, is likely to be settled by such a course of proceeding, by the devotion to it of half-an-hour or an hour, at a time, at intervals of days—weeks—months; when, probably, at each succeeding meeting, what passed at the last is forgotten, or denied, or disputed. It is rather to be wondered at, that, with such a system, accounts are ever taken—difficult inquiries as to facts ever answered—than that matters of this kind only emerge after a lapse of years, from the offices in which they have so long slumbered, and that many of them sleep there the sleep of death, and never emerge at all."

It must be allowed that a large class of cases may properly be referred at once to the Master, provided his office were placed on an effective footing; but there are many suits in which the answer of the defendant discloses facts which enable the plaintiff to obtain an injunction or enforce a payment into Court, whereby the main object of the suit is attained without the expense of a reference, and a just compromise is easily effected.

It is manifest that if the changes in contemplation should take place, the Masters should not only be learned and able, but energetic men—they should be competent to pursue their labours, like the judges, for six days than six hours a day; and they should be assisted by an additional number of clerks.

The probable effect of these reforms on the engagements of the profession will be, to

that the costs of each suit will be diminished in amount, but the number of suits will be increased; and, if due means are provided for expediting the proceedings, the payment of the costs will be obtained much earlier, and there will be less risk and loss. Another effect will not improbably take place: bills and answers must now be prepared by counsel; under a change of system, the solicitors will prepare their own petitions and personally support them before the Master.

Many other topics connected with the important alterations which are contemplated we must for the present defer. Our readers will, no doubt, have many suggestions to make. We have only at present hastily opened the question for their consideration.

We observe that Mr. Purton Cooper, Q. C., has just published a letter, addressed to the Solicitor-General, upon the bill in question, to which we shall soon advert.

MEASURES IN PARLIAMENT RELATING TO THE LAW.

SECRETARY OF BANKRUPTS.

THE Bill introduced by the Lord Chancellor, providing that the Secretary of Bankrupts shall be *ex officio* Chief Registrar of the Court of Bankruptcy, (and noticed *ante*, p. 273.) after passing through all its stages in the House of Lords without observation, met with an unexpected check in the House of Commons. Upon the motion for going into Committee, an amendment was proposed for referring the Bill to a Select Committee, and upon a division this amendment was carried by a majority of four! We find by the published list, that Mr. John Stuart, Mr. George Turner, Mr. J. P. Wood, Mr. R. Palmer, and Mr. Mullings, voted on this occasion in the majority and against the government.

The ground of opposition to the bill was, that it united two sinecure offices and perpetuated one of the two. It was admitted on all hands that the office of Chief Registrar, now vacant by the decease of the late lamented Serjeant Lawes, was substantially a sinecure and ought to be abolished, but the necessity for continuing the office of the Lord Chancellor's Secretary of Bankrupts was not a matter upon which equal unanimity of opinion prevailed. The Attorney-General, admitting that the Secretary of Bankrupts had not now as onerous duties

to perform as those which formerly attached to the office, still asserted that the office could not be dispensed with. Mr. Bouverie, on the other hand, contended, that the information taken before the Bankrupt Committee last session, demonstrated that the office was all but a sinecure, and suggested that the trivial duties now annexed to it might be satisfactorily discharged by one of the junior registrars, with an increased allowance of 50*l.* or 100*l.* per annum. It is to be hoped, when the matter comes to be inquired into by the Select Committee, the investigation will not be confined to the consideration of the question, whether it is desirable to continue the office of Secretary of Bankrupts, but that the adequacy of the machinery now in existence for administering the Bankrupt Laws, will be fully considered, and the expediency of establishing a systematic and effective control over the various functionaries in town and country, calmly and deliberately discussed. We rejoice to find so many of the leading members of the profession interesting themselves in a matter in which their professional experience affords such ample means for forming a correct judgment, but we should regret to find their interference was not followed by some measure of practical benefit.

SUMMARY JURISDICTION IN LARCENY.

The Bill introduced by the Attorney-General last session for *extending the Summary Jurisdiction of Justices of the Peace in Larceny Cases*, and which was then met by a determined and successful opposition, has been again introduced into the House of Commons by Sir John Pakington, with a few trifling alterations. The avowed object of this measure is "to prevent the expense and delay sustained in the prosecution of persons guilty of petty thefts." This object is sought to be effected in the bill now before parliament, by extending the provisions of the Juvenile Offenders' Act, (10 & 11 Vict. c. 82,) to all cases of larceny in which the person charged shall not at the period of the commission of the offence exceed the age of *sixteen years*, and to all cases where (without any reference to the age of the party charged) the value of the article stolen or attempted to be stolen shall not in the opinion of the justice exceed *one shilling*. By a separate clause, the justices are interdicted from ordering the punishment of whipping to be inflicted upon any offender whose age shall exceed *sixteen years*. Any measure which proposes to

throw upon those engaged in the administration of criminal justice the responsibility of deciding as well upon the law as the fact, and precludes a party accused of an offence from having the charge tried by a jury, is necessarily open to grave objection, but the principle having been long since adopted by the legislature in certain instances, and its practical operation—as it is said—proved to be beneficial, the question now is, whether its extended application to the cases comprehended in this bill is likely to be attended with advantageous results to the general community? The decision of this question is certainly not unimportant.

CHARITABLE TRUSTS.

The Solicitor-General, as promised at the commencement of the session, has re-introduced the Charitable Trusts Bill, giving jurisdiction to the County Courts in certain cases. The provisions of this bill are so well deserving of attention by the profession, that we propose to lay its leading provisions before our readers in an early number. For the present we give a short analysis of its contents:—

Petitions may be presented to Lord Chancellor or Master of the Rolls, where the income of charity exceeds 30*l.*, and does not exceed 100*l.*; Sect. 1.

Master to proceed on petition; 2.

Orders of the Master to be valid without confirmation, and to be enforced like orders of Court; 3.

Master may make special reports or orders, subject to confirmation; 4.

Master may order advertisements, &c.; 5.

State of facts may be dispensed with, and Master may regulate proceedings; 6.

Master to have usual powers; 7.

Judges of County Courts to have jurisdiction in cases of charities the incomes of which do not exceed 30*l.*; 8.

Judge not to settle scheme without previous notice by advertisement, and may direct notices in other cases; 9.

Judge not to proceed on application after notice given in certain cases; 10.

Order of judge not to be appealed from, except as herein otherwise provided, and to be enforced as under 9 & 10 Vict. c. 95; 11.

Appeal and proceedings on appeal; 12, 13.

Bond to prosecute appeal may be put in suit; 14.

Power to Court of Chancery in certain cases to order what judge shall have jurisdiction; 15.

In cases of charities the incomes of which do not exceed 30*l.*, not subject to jurisdiction of a judge of a County Court, petition may be presented to Lord Chancellor, &c.; 16.

Court of Chancery may refer to a judge of the County Court any matter which may be referred to a Master; 17.

Master or judge not to try titles, &c., but may direct suits, &c. for that purpose, or may certify particulars to Attorney-General, who may then proceed under 59 Geo. 3, c. 91; 18.

Contents of affidavit as to amount of income; 19.

In cases of charities for religious purposes trustees to be of same religion; 20.

Incorporation of treasurers of County Courts; 21.

Land, holden upon trust for a charity subject to jurisdiction of Court of Chancery and of judge, may be vested in treasurer; 22.

Treasurer to be a bare trustee; 23.

Memorandum of vesting order may be endorsed on title deeds; 24.

Judge may order trustees, &c., holding stock, &c., belonging to a charity subject to his jurisdiction to transfer same to treasurer; 25.

Judge may, upon application of persons holding charity monies, order payment thereof to treasurer; 26.

Judge may direct investment of charity monies; 27.

Transfers of stock to and by treasurer, how made; 28.

Treasurer to keep separate account of funds of each charity; 29.

Record of proceedings; 30.

By whom applications may be made; 31.

Costs; 32.

Lord Chancellor may make orders for regulating the proceedings of Courts under this act; 33.

Accounts of trustees of charities to be delivered to clerk of County Court; 34.

Act not to extend to religious or charitable institutions supported by voluntary contributions; 35.

Legal estate of hereditaments now vested in municipal corporations on charitable trusts to be vested in trustees, 5 & 6 W. 4, c. 76; 36.

Interpretation clause; 37.

Short title; 38.

Act may be amended or repealed; 39.

The proposed and rumoured reforms contemplated in Chancery Procedure in Ireland as well as in this country, are of such magnitude and importance as to require that they should be treated of in a distinct article. See p. 313, *ante*.

LANGUAGE OF ACTS OF PARLIAMENT.

Lord Brougham has introduced a very useful bill, designed, as his lordship (with his usual felicity of language,) observed, to improve and amend the only species of manufacture in the country which had received no improvement or amendment for the last 300 years,—the manufacture of acts of parliament. Their excess of verbiage was a grievance at once to the subject, to the law, and to the courts of justice. He should, therefore, present a bill to shorten

the language of all acts of parliament. He should propose a clause making every act of parliament alterable or amendable during the session in which it was passed. He should also propose the omission at the head of every clause of the formal but absurd words, "and be it further enacted." His next improvement was one suggested to him by the special pleaders, and related to the citing of other acts by their formal titles. He thought it would be enough to refer to the act, without giving the titles, and by merely quoting the chapter and section and year of reign of the Sovereign in whose time it passed. These alterations, and alterations like these, might be called by some mock reforms; but, in point of practice, they were reforms of great importance.

COPYHOLD TENURES.

In reply to Mr. Aglionby, Sir G. Grey said, that it was not the intention of the government to propose a measure to parliament for the *compulsory enfranchisement* of copyholds. A measure of that kind had been brought forward two years ago, but very strong objections were urged against it. A bill would, however, be presented to the other House relating to some of the minor points connected with the subject. Mr. Aglionby observed, that he would take the earliest opportunity of introducing a bill for the compulsory enfranchisement of copyholds.

CONSTRUCTION OF THE FACTORY ACTS.

As the judgment of the Court of Exchequer, in the case of *Ryder v. Mills*, upon the construction of the Factory Acts, will probably lead to a proposal to alter the law, it may not be unimportant to consider the point decided in that case, and the language of the statute upon which the judgment of the Court was founded.

The act 7 & 8 Vict. c. 15, provides, that no person under the age of 18 should be employed in any mill or factory more than 12 hours in any one day, and that the restrictions imposed, as regards the working of persons under 18, should extend to females above that age; and the 10 Vict. c. 29, substituted *ten* hours for 12, as limited by the previous act. The 26th section of the 7 & 8 Vict. c. 15, enacted,—“That the hours of the work of children and young persons in every factory shall be reckoned from the time when any child or young

person shall first begin to work in the morning in any such factory; and by section 27, one hour was to be allowed for meals, either at one time, or at different times before 3 o'clock P. M.; no young person was to be employed for more than five hours before one o'clock P. M. without an interval of half an hour for meal time, and all the young persons employed are to have the time for meals at the same period of the day. The act also provides, (by section 28,) that "The times of beginning and ending daily work of all persons employed in the factory, and any alteration thereof, of the times of the day, and amount of time allowed for their several meals," should be written or printed in a form specified, fixed on a moveable board and hung up.

Such being the provisions of the act of parliament, the mill-owners in the north found it convenient to adopt a system known as the relay or "shift system," under which young persons within the protection of the Factory Acts, though not worked for more than ten hours, excluding meal times, had nevertheless the hours of labour spread over so large a portion of the 24 hours that the hour at which the work of such persons ended was much more than ten hours from the time when young persons began to work in the morning, exclusive of the intervals allowed for meals. Mr. Dudley Ryder, one of the Sub-inspectors of Factories, deeming the adoption of the shift system a violation of the act of parliament, exhibited an information against the defendant, a mill-owner in Lancashire, who was convicted in a penalty of 5*l.*, and appealed against this conviction to the Quarter Sessions, and under the Quarter Sessions Procedure Act of last Session, (12 & 13 Vict. c. 45,) the question was brought before the Court of Exchequer in the shape of a special case. The simple facts upon which the case was founded were, that one female began to work at six in the morning and left off at seven in the evening, and a second female commencing her work at six A. M., did not leave off until half-past seven P. M., but neither of those persons worked or remained in the factory for above ten hours in the day.

After hearing the case fully argued, and taking time to consider, the Court of Exchequer, at the sitting after Hilary Term, pronounced its judgment in favour of the defendant, on the ground, that as the provision under which the defendant had been convicted was penal, it must be construed strictly, and that the language of the act of

parliament was not sufficiently clear to warrant a conviction. It was abundantly plain that the hours of labour were to be reckoned from that at which the first woman, child, or young person began to work; but the act did not define what should be the last hour of work. In other words, it was not clear, upon the language of the acts, that the legislature intended that all women and young persons employed in factories should leave off work at the same time. This being so, the Court could not say the defendant committed any offence by keeping one female or one child at work later than another, so that neither worked beyond ten hours. Upon this construction of the acts, the Court was of opinion that the conviction could not be sustained, and therefore directed that it should be quashed.

This decision, as might be supposed, is regarded as one materially affecting the interests of both mill-owners and factory operatives, and its consequences are anticipated with considerable satisfaction by the one class, and equal apprehension by the other. It is altogether beside our present purpose to throw any doubt upon the soundness of the principle of construction adopted by the Court of Exchequer, or the propriety of its application in the case of *Ryder v. Mills*. The discussion to which it has given rise, it is hoped, justifies the endeavour to put the question in dispute in a concise and intelligible form for the information of our readers.

NOTICES OF NEW BOOKS.

The Laws relating to the Land Tax: its Assessment, Collection, Redemption, and Sale; with a Statement of the Rights and Remedies of Persons unequally Assessed: and an Appendix containing all the Statutes in Force: with a copious Index. By SAMUEL MILLER, Esq., Barrister-at-Law. London: S. Sweet. 1850. Pp. 322.

WE briefly noticed Mr. Miller's work on the Land Tax just before the meeting of parliament, and now return to its consideration,—being satisfied that the subject is of great and general importance, because not alone the public, but the profession, are deeply interested in removing the gross inequality of the tax. The grievance to the public of the present assessments resemble, in a considerable degree, the annual Certificate Tax, for whilst the latter is a personal or poll tax, levied without regard to the income of the practitioner, the former is a tax

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 And after noticing Mr. Pitt's object in encouraging parties to redeem and purchase the tax, Mr. Miller observes, "The Act, directly, that, the tax should be raised with as much equality and indifference as possible; but as a foundation for this impartiality, and, as if in mockery of the provision, the commissioners and assessors were directed to be governed in their assessments by those made under the act passed for the collection of Land Tax in the reign of William and Mary, (1692). So readily did the parties appointed to carry the act into execution avail themselves of the latitude thus given, and so regardless were they of equality and indifference in their assessments, that, with comparatively few exceptions, the quota fixed upon the several parishes and places under the Act of 1799, were precisely the same as those levied in the reign of William and Mary. A striking example of this mode of assessment is furnished by the Borough of Liverpool, the Land Tax for which, in the reign of William and Mary, including the rate levied in respect of offices and pensions, and personal estate, was 802*l*. 8*sh*. 10*d*., of which 633*l*. 15*s*. was raised for the duties on offices, &c.; and, the latter duties having been repealed, the amount now assessed upon this borough, including the amount redeemed, is 165*l*. 13*s*. 10*d*. Manchester, Preston, Bath, Bristol, Leeds and other large towns present similar anomalies."

Mr. Miller then cites the express declaration of Mr. Pitt as to the effect of these redemptions and purchases on any future measure for taxing the land; and this bears importantly on the objection naturally raised by those who have invested their money in such purchases.

The third chapter comprises—1. The parties entitled to redeem and the mode of effecting redemptions. 2. The sale of mortgage on lands for the purpose of redemption. 3. The provisions in the redemption acts relating to contracts for redemption generally. 4. The redemption of land tax on crown lands, or lands within the Duchies of Cornwall and Lancaster. 5. Sales and charges of lands in Scotland for the purposes of redemption.

On all these important topics Mr. Miller has given the latest and most complete information; and his preface contains very valuable statements of the extent of the grievance which is sought to be redressed. He says—

"The amount of Land Tax unredeemed and annually collected is about 1,200,000*l*.; and this is so unequally assessed, that while in some parts of the country the parties assessed are paying more than 3*s*. in the pound, in other places the rate collected is only a few pence, and in others less than a farthing in the pound. Thus in the Borough of Marylebone and in the Borough of Liverpool the tax is less than a farthing in the pound, while in the parish of St. Andrew, Holborn, it is 1*l*. 10*s*., in some parts of the City of Westminster more than 2*s*., and in several places in the City of London more than 3*s*. in the pound."

"The ground having been thus prepared by a pretended revision and general settlement of the assessments, the next step was to prepare for the redemption, and for this purpose the Act of 38 Geo. 3, c. 60, was passed, by which the Land Tax, as then collected, was declared perpetual, subject to redemption. In proposing the resolutions upon which this act was founded, Mr. Pitt expressly declared that they left the question of a more equal repartition of the Land Tax precisely where they found it, and in support of this position made use of the following observations: 'Parliament now has the undoubted right of raising more than 3*s*. in the pound on land; and what greater authority would it acquire were the present redeemed? If the whole were to be redeemed, the only thing necessary to be provided, as expressly as any legislative provision can guard, is; that, if ever a new Land Tax is imposed, it shall not be imposed upon those who have redeemed in any different proportion from that on those who have not redeemed. It would be necessary to provide, that the amount of what may have been redeemed shall be deducted from any new impost.'"

As a practical reformer of this great grievance, Mr. Miller has not contented himself with relying on the justice and soundness of his views upon the question of a general revision of the tax; but has pointed out, in the mean time, the means by which the evil may in many districts be diminished.

"It will be seen (he says) that the act, 38 Geo. 3, c. 5, gives very distinctly a power of appeal to persons unequally assessed in parishes, townships or other places within a hundred or division; but this power was rarely exercised until the valuations were made under the Poor Rate and Property Tax Acts, inasmuch as the necessity for giving evidence of the value of the whole property within the division or district in which any inequalities were apparent were involved in so serious an expense, that few individuals could be found willing to encounter it. Since, however, the returns made under the Property Tax Act of 1842, have been laid before Parliament, several instances have occurred within the writer's knowledge, where parties improperly assessed have obtained relief; and in one of these, where the owner of nearly the whole property in a township was paying 1s. 3d. in the pound for land tax, while the owners of property in other townships in the same division were paying only 5d., and in some cases only 2d. in the pound, he obtained relief to the extent of 200l. a year.

"It will be apparent (he adds) from the construction of this work that the writer's principal object has been to arrange the several enactments relating to the Land Tax in such a form as to render them intelligible to the general reader. Hitherto, these enactments, contained in upwards of 700 sections, prepared without regard to method or arrangement, have been a sealed book even to a majority of those immediately interested in the subject of them; and it has required no slight expenditure of time and labour to put them in a readable form. The writer claims no other merit for his performance than that due to much labour; and should he succeed in attracting general attention to the present condition of the Land Tax, and enabling those who may consult the following pages to comprehend with facility the several matters of which they treat, as well as to appreciate the great public importance of the subject to which they relate, his exertions will be amply rewarded."

Parliamentary returns have just been printed, fully confirming the statements of Mr. Miller, regarding the glaring inequalities of the tax.

An important resolution of the Holborn Commissioners has been just come to, which is confirmatory of the opinion expressed by Mr. Miller in his work, "that all persons can require an equal assessment of the tax

under the present law over the several parishes, townships, &c., in a division."

In consequence of what recently fell from the Chancellor of the Exchequer, who expressed a similar opinion when a deputation waited upon him, the solicitor to the appellant in the case determined by the Holborn Commissioners in October last, who dismissed the appeal, wrote to Mr. Burchell, their clerk, directing his attention to the opinion expressed by the Chancellor of the Exchequer, and requesting that the Commissioners would re-consider their judgment. Mr. Burchell, in consequence, with proper promptitude, at once summoned a meeting of the Commissioners, which was held on Monday, the 11th inst.; and at that meeting the Commissioners, with only one dissentient, resolved that a general meeting of the Commissioners should be summoned for the 30th of April next, for the purpose of equalizing the assessment over the whole division, the effect of which, we understand, will be to relieve the parishes of St. Andrew Holborn and St. George the Martyr to the extent of between 6,000l. and 7,000l. a year.

THE INCLOSURE COMMISSIONERS' FIFTH ANNUAL REPORT.

To the Right Honourable the Secretary of State for the Home Department.

SIR,—We have the honour to forward to you, as one of her Majesty's principal Secretaries of State, pursuant to the provisions of the act passed in the 8th and 9th years of the reign of her present Majesty, c. 118, a General Report of our proceedings in the usual form, specifying such matters as are therein directed.

The number of applications of all kinds to this office since the passing of the act has been 498.

The proceedings of 79 of these cases having been completed or otherwise disposed of previously to the last General Annual Report, are not again inserted in the schedule.

Of the 419 remaining, 327 are for inclosure, 75 for the exchange of lands, 3 for partitions, 6 in respect of proceedings under local acts, and 8 for setting out copyhold and other boundaries.

The number of acres comprised in the applications for inclosure and conversion is 273,967A. OR. 2P.

The number of cases since the last Annual Report is 129.

Of these, 72 have been inclosures, of which 55 will, we believe, require the previous authority of parliament, and 17 will not.

There are 51 for the exchange of lands, 3 for partitions, and 3 in respect of proceedings under local acts.

The quantity of land comprised in the appli-

cations for inclosure since the last Annual General Report, is 48,066A. 2R. 29P.

Our report of any opinion as to the expediency or inexpediency of any inclosure is necessarily confined to those cases with respect to which the proper assents have been given to the provisional order.

Our schedule, which is in the same form as that of last year, contains :—

First, those cases which have already received the sanction of parliament.

Secondly, those authorized by the Commissioners when they presented their last Annual General Report.

Thirdly, those authorized by the Commissioners since that report, together with the proceedings which have taken place in all these cases since they were so sanctioned or authorized.

Fourthly, those which require, or it is supposed will require, the previous authority of parliament.

Fifthly, those which will not require such authority, but which have not yet been authorized by the Commissioners, and,—

Lastly, all other proceedings under the Inclosure Act.

In addition to the general statement in the schedule, we proceed now to report specially on those cases requiring the previous authority of parliament to which the proper assents to the provisional orders have been given, in the order in which such assents have been received ; the special grounds on which we think such inclosures expedient ; and in those cases where no allotments are made for exercise and recreation, or for the labouring poor, the grounds on which we have abstained from requiring such appropriation.

An application has been made for the inclosure of Dalbury-lees Green and other waste lands, containing 35 acres.

We consider this proposed inclosure expedient, on the ground that the land is capable of great improvement.

Also for the inclosure of Dillicar Common, containing between 500 and 600 acres. In this case no allotment has been required for the labouring poor, or for exercise and recreation, on the ground that the land, from its situation and character, is wholly unfit for either purpose.

We consider this proposed inclosure expedient on the ground that by drainage and fencing, the land will be rendered of much greater value for grazing.

Also for the inclosure of Kewstoke Hill Sandbay, Kewstoke Green, Pondfield Green, Milton Hill, and Milton Patch, containing 247A. OR. 31P. In this case it is not proposed to give any allotment for exercise and recreation, on the ground that the wants of the population do not appear to require it, and the sea-beach is close at hand.

We consider this proposed inclosure expedient, on the ground that the land, though of little value now, is well adapted for the purpose of cultivation, and being intersected by

old inclosures, those interested will be greatly benefited by exchanges.

Also for the inclosure of Tancred'sford, Cocksbury, Reeds, and Lower Common, containing 1,313 acres.

We consider this proposed inclosure expedient, on the ground that part of the land, which is of little value, and yearly deteriorating, may, on inclosure, be cultivated, and the rest planted with advantage.

Also for the inclosure of Caterham Common, Stanstead Common, Platt's Green, and Salmon's Green, containing 468A. 1R. 17P.

We consider this proposed inclosure expedient, on the ground that the land, which is at present of little value, will, when drained, be well fitted for cultivation.

Also for the inclosure of Subedge, open fields, meadow, and common, containing 884A. 3R. 13P.

We consider this proposed inclosure expedient, on the ground that the common land is divided by the Baulks, and cannot be profitably or conveniently cultivated in its present state, and because the pasture land, at present unproductive, is capable of great improvement.

Also for the inclosure of part of Sherwood Forest, containing 2,360 acres.

We consider this proposed inclosure expedient, on the ground that a great portion of this extensive tract of land may, at moderate expense be brought into profitable cultivation, affording useful employment, which is much required in this district.

Also for the inclosure of Swinmore Common, containing 8A. 1R. 5P. In this case no allotments are required for exercise and recreation, or for the labouring poor, as even if the common were of greater extent, it is too distant from the dwellings of any persons except those interested in the lands.

We consider this proposed inclosure expedient, on the ground that at present it forms an outlet from the different homesteads, whilst there is no properly constructed road across the waste ; and it is intended that, when the allotments are set out, a properly constructed road should be made.

Also for the inclosure of Bowerley Moor and Hardcastle Moor, containing 3,020 acres. In this case it is not proposed to make any allotment for the labouring poor, who are to receive allotments in respect of their rights.

We consider this proposed inclosure expedient, on the ground that the land will be greatly improved by drainage, and considerable employment afforded to the labouring poor.

Also for the inclosure of Caerhyn Common, containing 7,193A. 2R. 12P. In this case we have not required any allotment for exercise and recreation, or for the labouring poor ; the land is totally unfit for the purpose from its character and position.

We consider this proposed inclosure expedient, on the ground that the land when enclosed will be more profitably occupied, and that it will put an end to constant disputes, and prevent litigation.

Also for the inclosure of Carshalton and Wallington open fields, containing 1,145A. 1R. 6P.

We consider this proposed inclosure expedient, on the ground that the several pieces of each proprietor will be thrown together; and that, by the removal of the common rights now exercised, a proper system of cultivation may be pursued.

Also for the inclosure of the common and waste lands in the parish of Peas, containing 1,118A. 2R. 22P.

We consider this proposed inclosure expedient, on the ground that the land, though of good quality, is in a wet and neglected state; but when inclosed, may be made productive, and will afford a large field for labour.

Also for the inclosure of Waengær, containing 387A. 3R. 6P. In this case no allotment has been required for exercise and recreation, or for the labouring poor; the land, both from its situation and character, being unfitted for the purpose.

We consider this proposed inclosure expedient on the ground that it will lead to the improvement of the land, the employment of labour, and put an end to encroachments and disputes.

Also for the enclosure of Nutbourne Common, containing 190A. 1R. 11P.

We consider this proposed inclosure expedient, on the ground that the land, though at present of little value, may, by drainage and proper cultivation, be made productive.

Also for the inclosure of Storrington commons, containing 246A. 0R. 2P.

We consider this proposed inclosure expedient, on the ground that in its present state it is of little use, but when drained and inclosed, may be converted into good arable and grazing land.

Also for the inclosure of Bolham Hill, containing 47A. 1R. 3P. In this case no allotment has been required for exercise and recreation, or for the labouring poor, the land being too far distant from the population to be available for such purposes, and the access to it difficult; every cottage has already abundant garden ground attached to it.

We consider this proposed inclosure expedient, on the ground that the land is at present almost valueless, but will, when inclosed, be adapted for the general purpose of cultivation.

Also for the inclosure of the Churchstanton Turbary, containing 150A. 0R. 36P. No allotment in this case has been required for exercise and recreation, a large allotment having been given to the labouring poor, and the land not being convenient for the former purpose.

We consider this proposed inclosure expedient, on the ground that the land will be greatly improved in value, and that encroachments, which greatly affect the poor who are interested in the land, will be stopped.

Also for the inclosure of South Wootton Common, containing 326A. 2R. 18P.

We consider this proposed inclosure expedient, on the ground that the land is at present

in a neglected and unprofitable state, and is capable of the greatest improvement by drainage and cultivation.

Also for the inclosure of Caldicot Moor, Rogiet Moor, Ben Acre Common, Lea, Earlewood, Mynyddbach, and Cwm Wood, containing 1,309A. 2R. 17P. It is not proposed in this case to give any allotment for exercise and recreation, on the ground that the land is not suited for such purpose.

We consider this proposed inclosure expedient, on the ground that it will be a very great benefit to the parties interested in the lands.

Also for the inclosure of Alxwick Moor, containing 2,683A. 2R. 30P. In this case it is not proposed to give any allotment to the labouring poor, as each resident burgess will be entitled to an allotment.

We consider this proposed inclosure expedient, on the ground that it is desired by all parties interested, as beneficial, and the value of the land will be increased fourfold.

Also for the inclosure of the waste lands in the parish of Little Missenden, containing 423 acres.

We consider this proposed inclosure expedient, on the ground that the land, which is at present almost unproductive, will be increased in value, and lead to greater employment of the labouring poor.

The Report and Schedules show the extent of the proceedings under the Inclosure and Amendment Acts, and of the past and continued disposition of the country to avail itself of their provisions.

The number of cases now ready for the sanction of parliament are fewer by 17 than they would have been had no special Report been presented, in consequence of which a second act was passed, in the last session of parliament, authorizing the same.

The average expense of the inclosure proceedings, as far as this office is concerned, up to the time of the assents to the provisional orders, including any expense which may have attended these assents, and which leaves the case ready for parliament to deal with, or for us to signify our intention of authorizing the inclosure, is 18l. 17s. 4d.

EIGHTH REPORT OF COPYHOLD COMMISSIONERS.

Dec. 27, 1849.

SIR,—It is now our duty to present to you our Eighth Report, to which we have added a list of the enfranchisements completed, or nearly completed, by the direct instrumentality of this Commission.

Besides these, we have reason to believe that the terms for enfranchisement sanctioned by us and given in our former reports have materially assisted others, to which our consent was not necessary.

As to some of these reference has been directly made to us for our opinion, which has formed the basis of the agreement of the parties.

We are also enabled to state that those provisions of the Copyright Acts which empower the parties to pay the enfranchisement money to trustees, and thus to dispense with its payment into the Court of Chancery, have worked very satisfactorily; and that these powers are much resorted to by the owners of ecclesiastical manors.

We have again to remark that the progress of voluntary enfranchisement is, and will be, impeded while the prospect of a general compulsory measure remains doubtful in the public mind.

We have already given our views on this subject of compulsion in previous reports. We do not see any reason to alter them.

If, however, no general compulsory measure is adopted, some powers of effecting compulsorily the extinction of heriots and of amending and settling the system of stewards' fees would, we know, be considered a boon by a very large portion of the country.

Little or no objection would probably be made in parliament to such limited measures. Those members of the legislature who have been most prominent in opposition to any general scheme of compulsion, have nearly all of them declared, that to the extinction of heriots and regulation of fees they make no objection. We have the honour, &c.

T. WENTWORTH BULLER,

R. JONES,

W. BLAMIRE.

The Right Hon. Sir George Grey, Bart., M.P.
&c, &c.

EXAMINATION OF WITNESSES, &c.

FOR THE COURT OF BOMBAY.

A COMMISSION from the Supreme Court of Judicature, at Bombay, has been granted to *Edmond Lawford, Esq.*, the solicitor of the East India Company, dated 25th July, 1849, authorizing him "to receive acknowledgments and affirmations whensoever by law they are admissible in London, Westminster, or elsewhere in England, and to administer oaths for taking any affidavit or affirmation; or for receiving and taking the answer, plea, demurrer, disclaimer, or examination of any party or parties to any suit, or for the examination of any witness or witnesses upon interrogatories either *de bene esse* or in chief, or on any occasion; and for swearing executors and administrators in any suit, matter, or proceeding which may be pending or about to be instituted in the Court."

The following is the Table of Fees allowed by the Commission.

For a certificate of the correctness of all documents, copies of docu-

ments, signatures and attestation of the execution of deeds and other instruments . . . £ s. d. 0 10 6

For every oath administered other than those hereinafter specified . . . 0 2 6

Every answer taken on oath . . . 0 10 0.

Every answer without oath . . . 0 5 0

Attending to administer an oath out of Commissioner's Office, or to witness the execution of any deed, or other instruments . . . 1 1 0

The like attendance in his office, attending the execution of deeds or other instruments . . . 0 10 6

Ecclesiastical Side.

For swearing every executor or administrator to the due execution of his trust . . . 0 10 6

Summons for every witness search in Commissioner's Office . . . 0 2 0

For every certificate per folio of 90 words . . . 0 1 6

Copy of all papers per folio . . . 0 1 0

Drawing and registering every affidavit of securities for administrators . . . 0 5 0

Attendance out of Commissioner's Office to witness execution of administration bond or other matter . . . 1 1 0

The Fees on the Admiralty Side to correspond with the preceding.

On the Equity Side.

Every summons, oath administered, or certificate under Commissioner's hand . . . 0 2 0

Deposition and fair copy taken together, per folio of 90 words (including stationery charge) . . . 0 3 0

Every attendance out of Commissioner's Office within the cities of London and Westminster, per hour . . . 0 10 6

Every attendance in the country per day, (besides expenses) . . . 4 4 0

Making every exhibit . . . 0 1 0

For all office copies per folio of 90 words . . . 0 1 6

The Letters Patent establishing the Supreme Court of Judicature, at Bombay, in the East Indies, dated the 8th of December, 4 George 4, (1823), under the authority of which this commission has been issued, is as follows:—

"That it shall and may be lawful to and for the said Supreme Court of Judicature at Bombay, in any part of its jurisdiction, whether Common Law, Equity, Ecclesiastical, or Admiralty, by commission or commissions, under the seal of the said Court, to authorise and appoint any fit or proper person or persons, either generally or in any particular case, or for one or more term or turns only, to receive the acknowledgments of recognizances of bail and bail-pieces, and to administer oaths for the justification of bail, and for the taking of any affidavit or affirmation; or for receiving, and taking the answer, plea, demurrer, disclaimer, on examination of any party or parties to any

suit, or for the examination of any witness or witnesses upon interrogatories, either *de bene esse* or in chief, or any other occasion; and for the swearing executors and administrators in any suit, matter, or proceeding which may be pending, or about to be instituted in the said Court upon such occasions as the said Court shall think fit to issue such commissions."

[We are glad to make known the issuing of this commission, as it will enable the profession satisfactorily to obtain the examination of witnesses and parties,—to authenticate the administration of oaths, and the execution of deeds and other documents in this country to be adduced in evidence in the Court at Bombay. Mr. Parkinson of Argyll Street, has also received a similar commission.—ED.]

ATTORNEYS AND SOLICITORS OF IRELAND.

Our able contemporary, *The Press*, (of Dublin,) continues its zealous watchfulness in behalf of the character and just interests of our brethren, the attorneys and solicitors of Ireland. It thus writes of a weekly London paper, from whose general respectability we should have expected better things:

The *Sunday Observer*, in a dull paragraph, headed "Irish Law Reforms," has thought proper, in adverting to the presumed effects of the changes said to be meditated in reference to our law Courts, to speak of Irish attorneys in the following unbecoming spirit and insolent terms:—

"The proposed change in the practice of the common law Courts will make a great inroad on the profits derived by the attorney from the costs of initiatory proceedings. The diminution of such profits can scarcely be less than 25 per cent. That branch of the profession had long complained that the costs allowed in common law business had been so reduced that they scarce enabled its members to maintain their position as 'gentlemen,' notwithstanding the privileges conferred on them by the act of Parliament to assume the title.

"But this blow threatens to leave the Irish attorneys nearly in as prostrate a condition as that of some of the Irish landlords, without any further consolation that may be derived, whatever amount of public sympathy may be entertained for their misfortune."

We call attention (says *The Press*) to the coarse bitterness of those expressions, to be accounted for only by the conclusion that their writer is another of those malignant refugees who are so unceasingly engaged at the London press in the discreditable employment of traducing their country. This class of scribes follow their unnatural pursuit with feelings of keen revenge against a community which they remember it was impossible, in their instances, to impose upon by small or sinister capacities.

ATTORNEYS' ANNUAL CERTIFICATE TAX.

We have to remind our readers that the motion of Lord Robert Grosvenor for leave to introduce a bill for repealing this unjust impost stands *first* upon the list, for *Tuesday next*, the 26th instant.

All the lawyers in parliament have been "affected with notice" of this application, and we rely that the Members of the Bar, now or formerly in practice, (about forty in number,) will promptly perform an act of justice to their brethren of the second branch of their profession, by supporting the proposition, which the noble member for the metropolitan county has kindly and cordially adopted.

The Solicitors who have ceased to practise will, in like manner, we trust, not hesitate to "speak out" for their former colleagues, and repel any attempt to sneer at or undervalue the importance of the subject.

We expect, also, that the eminent solicitors in parliament who are still pursuing their professional avocation, will come forward unhesitatingly in behalf of their less fortunate brethren,—to a very large proportion of whom the tax is an oppressive burden,—so oppressive indeed, as shown by the statement of the Incorporated Law Society, (the statutory registrars of attorneys,) that nearly 600 on the Roll of 1848, did not, or could not, take out their certificates in 1849.

Both policy and justice demand the abrogation of the tax. It is no protection to the public against needy persons, for it is well known that many of them practise under one certificate, calling themselves the clerks of the person in whose name it is taken, and escaping the power of the Court in case of mal-practice.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Jan. 22nd, to Feb. 15th, 1850, both inclusive, with dates when gazetted.

Champion, Charles, and Henry Barham, 11, Austin Friars, Old Broad Street, Attorneys and Solicitors. Feb. 8.

Daniel, Edward, Joseph Barker, and Alfred Cox, Bristol, Attorneys, Solicitors, and Conveyancers, (so far as concerns the said Joseph Barker.) Feb. 1.

Dryden, William, William Ritson Dryden, Erasmus Henry Dryden, and John Rollit, Kingston-upon-Hull, Attorneys and Solicitors, (so far as regards the said John Rollit.) Feb. 5.

Foulkes, John, and George Culler Parker, Wrexham, Attorneys and Solicitors. Jan. 29.

Gamlen, Thomas, and Charles Davison Scott, 7, Fumival's Inn, Holborn, Attorneys and Solicitors. Feb. 1.

Morris, Thomas, and Richard Archer Walington, Warwick and Leamington Priors, Attorneys and Solicitors. Jan. 25.

Rice, Henry, and Edward Keate Stace, Newport, Isle of Wight, Attorneys, Solicitors, and Conveyancers. Jan. 29.

PERPETUAL COMMISSIONER.

Appointed under the Fines' and Recoveries' Act.

Cooke, John, Over near Winsford, in and for the County of Chester.

MASTERS EXTRAORDINARY IN CHANCERY.

From Jan. 22nd, to Feb. 15th, 1850, both inclusive, with dates when gazetted.

Brown, Francis, Market Deeping. Feb. 15.
Davies, William, Haverfordwest. Jan. 25.
Gidley, Gustavus, jun., Plymouth. Feb. 5.
Hoyward, Alfred, Brackley. Feb. 1.
Holroyde, John Bailey, Halifax. Feb. 15.
Hurford, Alexander Samuel, Oxford. Feb. 1.
Penberthy, Henry, Devonport. Feb. 8.
Reynolds, John James, Hereford. Jan. 29.
Shuttleworth, Thomas, Manchester. Feb. 8.
Williams, Isaac, Bath. Jan. 29.
Wood, James, Nottingham. Jan. 22.

NOTES OF THE WEEK.

NON-ATTENDANCE OF SPECIAL JURYMEN.

It is noticed in *The Times*, that in a recent case at Nisi Prius, *The Queen v. Edwards*, only six special jurymen answered to their names. The question then arose as to whether, this being a *scire facias*, a tales could be called by either party. It was suggested, that although the defendant could not pray a tales without

the warrant of the Attorney-General, yet that the Crown could do so. Considerable time was lost in discussing the question, when the Attorney-General entered the Court, but he said he did not appear as Attorney-General, but as counsel for the defendant, and Mr. Justice Wightman then directed the case to stand over until the next sitting. In the next special jury case only four gentlemen answered, and a verdict was taken by consent, subject to a reference.

The Reporter observes, that Mr. Justice Coleridge invariably fines the absent jurors, at the same time stating that it was compulsory, and that there was no discretion left in the judge. It is certainly a great hardship on persons who have gone to the expense of striking and summoning a special jury and preparing for trial, paid counsel's fees, and had their witnesses in attendance, to be thus treated. We trust the Court will come to a uniform decision on the subject.

STATE OF THE COURTS.

We lately noticed the inconvenience sustained by the Court of Exchequer. We have to add a complaint of the Queen's Bench. Mr. Justice Wightman was obliged to create a pause in the proceedings in order to beg that some attempt might be made to prevent a strong current of cold air from finding its way into the Court; he said it was so bad he could not bear it. Mr. Humphreys said, his lordship must take care, or there would be opened upon them a current of hot air, that would perhaps be worse. Mr. Serjeant Wilkins said, he regretted they could not see this "Reid" shaken by his own wind.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Maclure v. Ripley. Jan. 24, 25, 26, 29, 1850.

INJUNCTION. — PROCEEDINGS AT LAW. — BREACH OF CONTRACT.

Held, reversing the decision of the Vice-Chancellor of England and dissolving an injunction staying further proceedings on a judgment recovered in an action for breach of contract, that as there was no fraud shown in obtaining the contract, for the breach of which the action was brought, the plaintiff-at-law was entitled to proceed on the judgment.

THIS was an appeal from an order of the Vice-Chancellor of England, continuing the injunction to restrain the defendant from proceeding on a judgment in an action for breach of contract. It appeared that in June, 1846, the defendants, merchants at Liverpool, entered into an agreement with the plaintiff, a merchant at Belfast, to undertake a joint adventure to

ship wool to China, and the proceeds to be vested in the purchase of teas. In the following March, the first payment became due, but was not paid by Maclure, and the defendants then offered to release the plaintiff from his contract, which he after inspecting the correspondence between the defendant's agent in China accepted. On the 16th March, the plaintiff however wrote to say, he would take part of the cargo of tea coming home, which the defendants agreed to; but on the arrival of the cargo the plaintiff refused to fulfil his contract without being allowed the full benefit of the first contract, whereupon an action for the breach was brought. The Vice-Chancellor of England granted an injunction to stay the action, which was however on appeal suspended until the trial thereof, when the defendants obtained a verdict for 1,700*l.*, and a motion for new trial had been refused by the Court of Exchequer negating the fraud pleaded by the plaintiff by withholding two letters from China of the 19th and 22nd of December, in order to induce him to forego his contract. An injunc-

323 Superior Courts: Lord Chancellor.—Rolls.—V. C. of England.

tion was then granted by the Vice-Chancellor to restrain the defendants from proceeding on the plea, and from withdrawing this appeal was presented.

Malins and Renshaw for the appellants; *Bethell, Holt, and Widdow* for the respondents.

The Lord Chancellor, after taking time to consider, said, the two letters which had not been shown could have made no difference in the result of the plaintiff's intention, as they contained even more disheartening statements in respect of the venture than the other letters. The defendants had given the plaintiff all the information they had themselves, and when he refused to pay his share when it became due, his interest in that venture ceased, and in respect of the cargo of teas, he was a purchaser. The appeal must, therefore, be allowed, with costs.

Seagrove v. Mayhew and another, Jan. 26, 1850.

PLEA OF INSOLVENCY AFTER BILL FILED.

Held, reversing the order of the Vice-Chancellor of England, that a plea of insolvency after bill filed, was good.

This was an appeal from the Vice-Chancellor of England, who had overruled a plea of insolvency on the ground that it took place after the bill was filed.

Holt and Gilchrist, for the appellants, *Malins and Cliechester* for the respondents.

The Lord Chancellor said, that the plea was good, and reversed the decision of the Court below.

Feb. 13.—*Adams v. Blackwall Railway Company*, Cur. ad. vult.

13.—*Waring v. Manchester, Sheffield and Lincolnshire Railway Company*. Appeal from Vice-Chancellor Wigram dismissed with costs.

16, 18.—*Hutchinson v. Topham*. Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

18.—*Cross v. Sprigg*, Cur. ad. vult.

19.—*Miller v. Priodon*. Reference to certain plaintiff's title.

19.—*Huntley v. Nockolds*. Appeal allowed from the Vice-Chancellor Wigram.

19.—*Birmingham and Shrewsbury Railway Company v. North-Western Railway Company*. Part heard.

Master of the Rolls.

Allfrey v. Allfrey, Dec. 15, 1849. Jan. 31, 1850.

MASTER'S CERTIFICATE, ALLOWING INTERROGATORIES, IN REGULAR CASE, WAIVED.

A motion was refused with costs to take off the file the Master's certificate, allowing certain interrogatories where the defendants, and by their subsequent conduct waived any objection thereto.

This was a motion on behalf of the defendants, to take the certificate of the Master off the file, allowing certain interrogatories for

the examination of the defendants under the decree, on the ground of irregularity. The Master, not having required the plaintiff to bring in a statement of facts, as a ground for the interrogatories. The decree declared that the plaintiff was not bound by the settlement of accounts relating to the estate of George Allfrey, deceased, and a reference was directed to take the accounts, with leave to state special circumstances. A draft of the interrogatories directed to be brought in by the plaintiff for the examination of the defendants, had been left at the Master's office, and a copy sent to the defendants' solicitor, who attended before the Master to settle them. An objection was taken to the 4th interrogatory, which was overruled, and further time was given and examination was taken. Upon the attendance before the Master as to the sufficiency of the examination, it was objected that a statement of facts ought first to have been taken before the interrogatories were allowed; and the inquiry was thereupon adjourned for this application to the Court.

Turner and H. Clarke in support, *Widdow and Raschi* contra.

The Master of the Rolls, after taking time to consider, said, that considering the nature of the suit and the decree, the course taken by the Master was right, and that even had there been any irregularity it was waived by the subsequent conduct of the defendant. The motion was therefore dismissed with costs.

Feb. 16.—*Ord and others v. Parry and others*.

Special injunction to restrain defendants from selling corn ground at other than the plaintiffs' mill.

Vice-Chancellor of England.

Export Imperial Bank Company, Jan. 1851.

RECEIVER.—JOINT STOCK COMPANIES.

WINDING-UP ACT.—OFFICER/MANAGER.

REFERENCE.

A petition was refused to appoint an official manager, under the 11 & 12 Vict. c. 45, the receiver appointed in a suit relating to the same estate, without a reference as to fitness to the Master.

This was a petition for the winding up of the above company, under the 11 & 12 Vict. c. 45, and for a direction to the Master to appoint as official manager the receiver appointed in the suit of *Wallworth v. Holt*, which had been filed by one of the shareholders.

C. Hall, in support, contended that there ought to be appointed two receivers over the same property.

Little, contra.

The Vice-Chancellor said, that it was desirable the Master should consider who was a fit person to be appointed a manager under the extensive powers of the 11 & 12 Vict. c. 45, and made the usual reference without the direction.

In re Fagg's Trust. Jan. 26, 1850.

TRUSTEES' BILL, ACT.—COSTS.

Under a deed of settlement the cestuis quo-
trent were empowered, during their lives,
to appoint any other person or persons in
the place of any trustee dying, refusing, or
becoming incapable of acting in the trusts.
Upon the death of a trustee, two new
trustees were appointed, and the former
trustees directed to transfer the fund to
them. Upon their paying the trust fund
into Court; held, that the trustees were
liable for the costs thereby incurred.

THIS was a petition for the payment out of
Court of certain trust funds, amounting to
7,968*l.*, which had been paid into Court by
the surviving trustees, Thomas Walters and
William Wakers, under the 10 & 11 Vict. c.
96, with the costs thereby incurred by the
petitioners to whom the interest was payable dur-
ing their lives. The deed of settlement pro-
vided, that if either of the trustees died or
were desirous of being discharged from, or
incapable of performing, the trusts, the pe-
titioners during their lives, and afterwards
the surviving, or continuing trustees, might
appoint any other person or persons in their
stead. Alfred Fagg, one of the trustees, hav-
ing died, the petitioners appointed 2 new trust-
ees to whom the former trustees were request-
ed to transfer the fund, but they paid the
money into Court, under the 10 & 11 Vict.
c. 96.

Bethell and *E. G. White*, in support of the
petition, which was opposed by *Bevir*, for the
former trustees as to costs, on the ground that
as only two trustees had been appointed instead
of the three originally appointed, the trustees
had no other course open to them, than of pay-
ing the money into Court.

The Vice-Chancellor said, the deed of set-
tlement enabled the petitioners to appoint one
or more trustee or trustees, in the place of those
retiring or dying, and that the former trustees
were not therefore justified in paying the
money into Court, and they must bear the costs
thereby occasioned.

Feb. 13.—*Anderson v. Warner*—Special in-
junction to restrain publication of invention
which had been communicated to defendants
for the construction thereof.

13.—*Weekes v. Waller*—Demurrer allow-
ed with costs.

14.—*Forster v. Greaves*—Bill dismissed
with costs.

15.—*Cullum v. Upton*—Order for specific
performance.

15.—*Stammers v. Halliday*—Order as to
costs.

16.—*Neaham v. Esdaile*—Demurrer al-
lowed for want of equity and of parties.

18.—*Ogden v. Washbourn*—Injunction
made perpetual with costs.

19.—*Birkenhead, Lancashire and Chester*

*Junction Railway Company v. Ravenscroft and
others*—Injunction to restrain defendants from
proceeding under the 8 Vict. c. 18, s. 68, and
8 Vict. c. 16, s. 6, for compensation for alleged
injury to their property.

Vice-Chancellor Knight Bruce

*Ex parte Litchfield, in re St. George Steam
Packet Company.* Jan. 24, 1850.

JOINT-STOCK COMPANIES' WINDING-UP ACT.
— CONTRIBUTORIES. — TRANSFER TO
MINOR.

Where the owner of shares in a joint-stock
company had transferred two of them to
his son, then a minor, and who upon at-
taining his majority renounced the con-
tract; held, that the name of the trans-
feror was rightly inserted in the list of
contributories under the 11 & 12 Vict. c.
45, although the company's deed of settle-
ment allowed minors to hold shares, and the
minor had availed himself of a shareholder's
privileges during his minority.

WILLIAM Litchfield, the owner of shares in
the above company, transferred, in 1841, two
of them to his son, Clayton Litchfield, then 17
years of age, and the transfer was registered.
The company's deed of settlement allowing
minors to hold shares. In 1843 the company
ceased to carry on business, and in 1845, when
Mr. Clayton Litchfield came of age, he re-
pudiated the contract, although he had availed
himself of the privilege of a free ticket on
board the company's ships. The Master to
whom the matter was referred for the dissolu-
tion and winding up, under the 11 & 12 Vict.
c. 45, inserted W. Litchfield's name in the list
of contributories, whereupon this appeal was
presented.

Lloyd and *Hetherington*, in support, cited
Goode v. Harrison, 5 B. and Ald. 147; *Bruce
v. Wapnick*, 6 Taunt. 118.

Bacon, and *J. V. Prior*, contra, were not
heard.

The Vice-Chancellor said, that as the son
had refused to confirm the transfer of shares
in question when he became of age, the father,
notwithstanding the clause in the deed of set-
tlement, still remained liable, and the motion
must be refused with costs.

Feb. 13.—*Ex parte Johnson, in re Bulmer*—
Part heard.

14.—*James v. Talbot*—Exception to
Master's report overruled.

15.—*Inman v. Wearing*—Part heard.

15.—*In re Royal Bank of Australia*—
Order made for security for costs amounting to
100*l.* in a petition for winding up where the
petitioner resided in Scotland.

15.—*Keppel v. Countess Dowager of
Albemarle*—Stand over.

18.—*Ex parte Bishop, in re Bishop*—
Petition dismissed without costs to supersede
fiat.

18.—*Ex parte Jones, in re Agnes*—Pa-

tion dismissed on the ground that more than 21 days had elapsed since order of Commissioner which was appealed from.

Feb. 19.—*Fyler v. Newcombe*—Hearing of bill ordered to proceed, and preliminary objection overruled.

—19.—*Morgan v. Moore*—Injunction to restrain waste and destruction of title-deeds.

Vice-Chancellor Wigram.

Burt v. Burnham. Jan. 28, 29, 1850.

LEASEHOLD ESTATES.—TENANTS FOR LIFE.—ENJOYMENT IN SPECIE.—CONVERSION.

Upon construction of will, held, that the tenants for life were entitled to enjoy the rents and profits of the leaseholds in specie.

JOHN Burnham, of Church Row, St. Pancras, directed his residuary estate to be invested, and the rents of the freehold and copyhold to be paid to certain legatees for life, with remainders over, and the trustees were empowered to sell the freehold and copyholds, and after the deaths of certain persons the freehold, copyhold, and leasehold estates, if not previously sold. This suit was instituted to administer the estate, and for a direction whether the leaseholds were to be converted during the lives of the tenants for life, or whether they were entitled to enjoy the rent and income in specie.

Kenyon Parker and Martindale for the plaintiffs; the *Solicitor-General and Steere* for the defendant; *Bichner* for other parties.

The Vice-Chancellor held, that the tenants for life were entitled to enjoy the leaseholds in specie; *Pickering v. Pickering*, 4 Myl. and Cr. 289.

Feb. 13.—*Johnson v. Johnson*—Cur. ad. vult.

—14.—*Clay v. Rufford*—Stand over to try action at law.

—13, 15.—*Jones v. How*—Bill dismissed with costs.

—16.—*In re Runnington's Trust*—Order for payment of legacy to churchwardens and overseers of parish.

—16.—*In re Dendre Valley Railway Company*—Stand over.

—18.—*Morris v. Taylor*—Exceptions to Master's report overruled—Costs reserved.

Court of Queen's Bench.

Wakeman v. Lindsay and another. Jan. 22, 1850.

DISTRESS.—NOTICE.

A notice of distress was held good, although it only enumerated two articles of furniture, and then proceeded to say, "and any other goods and effects that may be found in and about the premises."

Miller showed cause against a rule which had been obtained to set aside the verdict for the defendants, and for a new trial, in an action for unjustly and wrongfully selling the plaintiff's

goods under a distress, on the ground that the notice under stat. 2 W. & M. sess. 1, c. 5, was insufficient for not enumerating all the articles which had been seized,—the inventory merely enumerating two articles of furniture, and then proceeding,—"and any other goods and effects that may be found in and about the premises."

Udall in support.

The Court said, that although the form was not very intelligible, yet as the plaintiff could not mistake as to what was on the premises, the notice was sufficient; and the rule was therefore discharged.

Gaskill v. Sheen. Jan. 23, 1850.

EVIDENCE.—ADMISSION OF LETTERS.—

In an action to recover a sum of money which had been paid by mistake, certain letters were held properly to have been admitted to show a demand, and that no defence thereto had been set up, although no answer was sent, nor any admission of the receipt made.

THIS was an action by an advertising agent against the proprietor of the *Bedford Mercury*, to recover a sum of money which had been paid a second time by mistake. Letters were produced, and admitted at the trial, from the plaintiff to the defendant, representing the circumstances, but no answer was returned nor admission made of having received them. The plaintiff having obtained a verdict for 7l. 7s. 9d., a rule nisi had been obtained for a new trial on the ground of the improper reception of the letters.

M. Chambers and Piggott, showed cause against the rule, which was supported by *O'Malley and Spicer*.

The Court said, the letters were admitted to show that a demand had been made, and the defendant set up no defence in answer to the letters, and the rule was discharged.

Feb. 14.—*Regina v. Stacey*—Rule discharged to quash order of Sessions, annulling barrister's certificate of exemption from poor-rate.

—15.—*Regina v. Whitmarsh*—On demurrer to a return to a mandamus to register the change of name of an assurance company, judgment for the defendant.

—15.—*Same v. Same*—Stand over to next Term.

—15.—*Regina v. Ardsley*—Rule absolute to quash order of sessions, and confirming order of justices for payment to treasurer of county lunatic asylum, by treasurer of union of lunatic's maintenance.

Common Pleas.

Doe dem. Church v. Pontifex and another, Jan. 21, 1850.

MEMORIAL OF ANNUITY DEED.—PAYMENT BY CHECK.

Held, that a memorial stating, as part consideration for an annuity, the payment of

a cheque on 29th December, 1837, drawn on the defendants' bankers, was not void for not stating when the cheque became payable—as the Court would presume the cheque was drawn on the day of date and imported payment on the same day.

A RULE nisi was obtained to enter a nonsuit in this case upon leave reserved in Michaelmas Term last, (*ante*, p. 85). The action was in ejectment to recover possession of certain premises upon which the lessor of the plaintiff had erected a brewery, the defendants advancing the money and finding materials for the same on the security of an annuity amounting to 11 per cent. on the sum so advanced. In April, 1839, the annuity deed was executed, the memorial of which stated the consideration to be 1,882*l.* 3*s.* 6*d.* for work and labour and goods sold and delivered, and 1,303*l.* 18*s.* 9*d.* for money lent and advanced and interest thereon, and which was stated to have been paid as follows, namely,—250*l.* by cheque of the defendants on 29th December, 1837, on Messrs. Smith & Co., their bankers, &c. At the trial before L. C. J. Wilde, it was objected that the memorial did not sufficiently comply with the stat. 55 G. 3, c. 141, in stating how and in what manner the consideration was paid, as it did not appear when the cheque became payable. A verdict having been taken for the plaintiff, with leave to enter a nonsuit if the Court were of opinion the memorial was sufficient, this rule had been obtained.

Whately and J. Brown showed cause; Bovill in support.

The Court said, it was well understood that a payment by cheque imported a payment on the day on which it was dated, and the Court would not presume an evasion of the statute by misdating of the cheque. The rule to enter nonsuit must therefore be absolute.

Feb. 13.—*Smith v. Hamilton*—Stand over.

—13.—*Yates and another v. Hoppe*—Rule absolute to enter verdict for defendant.

—15.—*Heyho v. Barge*—Rule discharged for new trial.

—15.—*Tassell v. Cooper*—Verdict for plaintiff.

Court of Exchequer.

Attorney-General v. Shillibeer. Jan. 15, 1850.

INFORMATION FOR PENALTIES.—COSTS OF CROWN.—SET-OFF BY SUBJECT.

An application was refused to re-open the taxation of the Queen's Remembrancer in an information under the Post-Horse Duties' Act, in order that the defendant might set-off against the Crown the costs of a former information in which the Crown was unsuccessful.

Quære, whether such costs can be set-off against the Crown by the subject?

THIS was an application by the defendant in person to re-open the taxation of the Queen's Remembrancer, and that the defendant should

be allowed to set-off the costs, amounting to 200*l.*, to which he had been put on a former information for penalties under the Post-Horse Duties' Act, when the Crown was unsuccessful. It appeared that 236*l.* of the costs of the Crown had been taxed off under the order made for reviewing the taxation, (*ante*, p. 127.)

The Attorney-General, Watson, and J. Wilde, for the Crown, were not called on.

The Court, without entering into the question of the right of the subject to set-off costs against the Crown, said the taxation had been conducted in a very satisfactory manner, and refused the rule.

In re Thornton's Recognizances. Jan. 22, 1850.

DISCHARGE OF RECOGNIZANCES.—PAYMENT OF COSTS OF APPEAL.—DISCHARGE UNDER INSOLVENT DEBTORS' ACT.

The Court refused to discharge, on motion, the recognizances for the appearance of T. to an indictment which had been removed by certiorari into the Queen's Bench, where it was also conditioned that T. should prosecute the appeal with effect, and if unsuccessful should pay the costs of appeal, and T. had obtained his discharge from payment thereof under the Insolvent Debtors' Act.

THIS was a motion to discharge the recognizances entered into by John Thornton and two sureties for the appearance of Thornton to an indictment at a quarter sessions for Westmoreland, which had been removed by certiorari into the Queen's Bench. It appeared that the recognizances were also conditioned for the prosecution of the appeal by Thornton, and for the payment of the costs if he were defeated. At the trial a verdict passed for the Crown, and Thornton was sentenced to two months' imprisonment and to pay the costs, amounting to 70*l.* Upon his discharge by the Insolvent Debtors' Court, the recognizances were estreated, whereupon this application was made.

Pashley, in support, referred to the 5 W. & M. c. 11, and contended that the third section, as to payment of the costs, only applied to principals, and that the bail had fulfilled the stipulations of the recognizances.

Ramsay, contra, was not heard.

The Court said, that under the third section the bail could not be discharged until the costs were paid, and if they had satisfied the recognizances, they might set up that defence in answer to any proceedings which might be taken against them. The motion was therefore refused.

Feb. 13.—*Mallatt v. Langdon*—Rule discharged for new trial.

—14.—*Doe dem. Jones v. Jones*—Rule discharged to enter verdict for defendant.

—15.—*Parry v. Thomas*—Rule absolute to enter judgment for plaintiff, non obstante verdicto.

Re Thomas Smith, Jan. 1856. *Threatening Letters*.—An indictment under the 7 & 8 G. 4, c. 29, for sending threatening letters was held, supported by a letter to a banking firm stating that if £250 sovereigns were not deposited in a place named by a certain time, the books would be burned and the bank stopped.

This was an application to reverse the conviction of Thomas Smith, who was indicted under the 7 & 8 G. 4, c. 29, for sending a letter to the banking firm of Messrs. Herries, Farquhar, & Co., stating that if £250 sovereigns were not deposited in a certain place on a certain day, the writer would not prevent a gang of ruffians from burning their books and causing a stoppage of their bank.

Books, in support, cited: *Re v. Postford*, 4 Car. & P. 229; *Re v. Southerton*, 6 East, 126.

Beattie, contra, was not called upon.

The Court said, that the letter amounted to a demand of money by intimating that something would happen unless the bankers paid him a certain sum, and it was accompanied by a menace, that if it were not paid the books would be burned and the stoppage of the bank effected; and the conviction was therefore affirmed.

George Ruckham, v. Jan. 26, 1856. *Bankruptcy*.—A certificate of the third class was granted after the expiration of 12 months from the date of the first meeting of the creditors of the bankrupt, had traded recklessly and had kept imperfect books, although no funds were traced.

There was an application for the certificate of George Ruckham, who carried on business as a wine merchant at Southdowns near Leeds, Yorkshire. The debts amounted to £7,719, and the assets to about £601. The bankrupt had begun business without capital and the books were imperfectly kept, but there were vouchers for the expenditure.

Linklater, in support, said the bankrupt's private expenses were only about £300, and that his father had offered to pay for the pound, which had not been accepted.

Lucas, for one of the creditors, opposed on the ground of reckless trading, imperfect book-keeping, and excessive expenditure. Disraeli, one of the assignees, also opposed.

The Commissioner said that, although there had been no fraud, yet the books had been imperfectly kept, and no account of stock ever been taken. The certificate would be suspended for 12 months from the date of the fiat with protection, and would then be of the third class.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see.

Jurisdiction of County Courts, p. 87.

Poor Law and Magistrates' Cases, 108.

Courts of Common Law.

Construction of Statutes, 128, 146.

Principles and Jurisdiction, 165.

Appeals from Revising Barristers, p. 189.

Law of Attorneys and Solicitors, p. 229.

Courts of Equity.

Law of Property and Conveyancing, p. 246.

Evidence, p. 289.]

LAW OF COSTS.

ADMINISTRATION SUIT.

Cause of action out of jurisdiction.—*Infection*.—Although a cause of action arises entirely in Scotland, and all the witnesses reside there, the creditor will not be allowed to proceed with an action there, after a decree has been obtained in England for the administration of the deceased debtor's estate, and the Scotch creditor has come in before the Master to prove his debt, and he will be liable to pay

the costs of an application to restrain him from prosecuting his action. *Graben v. Adams*, 1 H. & T. 247.

APPEAL.

In determining the question of costs, on an appeal, the Lord Chancellor places himself in the situation of the judge in the Court below; and, if the motion has been improperly granted there, the Lord Chancellor reverses the order made, with the costs incurred in the original motion. *Beardner v. London and North Western Railway Company*, 1 H. & T. 161.

See Irregular Order.

CHARITY.

1. *Improper claim by respondent*.—Where a party sets up an unfounded claim, and in consequence of such claim was served with a petition, the Court declined making any order as to his costs. *Re Sharnbury Municipal Charities*, 1 H. & T. 204.

2. *Double set of exceptions*.—In a charity case, both the Attorney-General and the trustees filed similar exceptions. Held, that the principal defendants, though charged with costs, ought to have the costs occasioned by the double set of exceptions. *Attorney-General v. Ward*, 11 Beav. 203.

Taxation.—A party to whom costs are awarded, may proceed in the taxation, notwithstanding he may be in contempt. *Newton v. Ricketts*, 11 Beav. 67.

CORPORATION.
 Under an act of parliament (7 & 8 Vict. c. civ.) a corporation took lands for public purposes. The act empowering the Court to order the costs, charges, and expenses of re-investing the compensation money to be paid by the corporation. On a 4th application to re-invest the residue amounting to 681: Held, that the proceeding was not so vexatious as to disentitle the party to the costs. *In re Merchant Tailors' Company*, 16 Beav. 485.

ADMINISTRATOR.
 After a creditor had commenced an action against the administratrix of his debtor, a decree was made, in a suit by the next of kin against the administratrix, for the administration of the intestate's estate; and the administratrix gave notice of the decree to the creditor. He then gave notice to her, that he should proceed with his action, unless he was paid the costs of it; and the costs not being paid, he delivered his declaration. Whereupon the administratrix appeared to the action and called on the creditor (who was out of the kingdom) to give security for the costs of it.

The Court, on the application of the administratrix, restrained the creditor from proceeding with his action, but gave him all his costs at law, and also the costs of the motion, and ordered the administratrix to bring the testator's assets into Court. *Turner v. Connor*, 15 Sim. 630.

DEMANDER TO BILL OF REVEALOR.
 Demander to a bill filed by the representatives of a trustee defendant, who had died after decree, and whose interest had survived to a co-defendant, allowed with costs. *Buchanan v. Mallis*, 11 Beav. 52.

DISCLAIMING DEFENDANT.
Foreclosure.—In a suit for foreclosure, a party interested in the equity of redemption disclaimed and stated he did not, and never did, claim any interest. The bill being brought to a hearing, held, that he was not entitled to his costs. *Buchanan v. Greenway*, 11 Beav. 58.

EVIDENCE, CUMULATIVE.
Special directions.—**Taxation.**—A party proved exhibits by 2 witnesses. Held, he was not on that account to be charged with the costs, for in equity such a proceeding may be necessary.

SPECIAL DIRECTIONS TO THE TAXING MASTER.
 As to whether matters had been improperly introduced by amendment, and to charge the plaintiff therewith. *Burkett v. Giles*, 11 Beav. 249.
EXCEPTIONS.
 Exceptions to a report were taken, before, but set down for argument after an act of

parliament, came into operation which rendered the question raised by them of no importance. Held, that the expleant must pay the costs of them. *Hemming v. Spers*, 15 Sim. 651.

See Clarity, 2.

IRREGULAR ORDER.
Appeal.—An application by the defendant to the Master of the Rolls to discharge, for irregularity, an order of course, had been refused, with costs; but the order was varied by the Lord Chancellor on appeal, on the ground that the form of the order, though the usual form, was inaccurate:—Held, notwithstanding, that the defendant ought to pay the costs of the motion at the Rolls, and that, although the cause belonged to a Vice-Chancellor's Court, and the defendant was therefore unable to move at the Rolls to discharge the order, except for irregularity. *Watson v. Lisle*, 1 H. & T. 308.

LEGATEES.

1. *Suing on behalf, &c.*—Costs as between solicitor and client.—In a legatees' suit on behalf, &c, the assets were insufficient for payment: Held, that the plaintiff was entitled to his costs out of the fund, as between solicitor and client. *Cross v. Kennington*, 11 Beav. 89.

2. In a suit by a residuary legatee against the executors of the will, the testator's estate proved insufficient to pay his debts.

Held, that the plaintiff was entitled to his costs, not as between solicitor and client, but as between party and party only.

The decision to the contrary in *Burkitt v. Roscoe*, 20 Sim. 336, disapproved of. *Weston v. Clowes*, 15 Sim. 610.

LUNACY.

Supersedeas.—In the case of infants, it is the habit of the Court very much to disregard form in order better to protect their interests, and in some respects lunatics are entitled to a similar privilege. This indulgence, however, is not to be granted to the same extent to a lunatic applying for a supersedeas, for he cannot at the same time assert his soundness of mind, and claim the benefit of relaxation of practice conceded to those of unsound mind.

Observations by the Lord Chancellor upon the irregularity and impropriety of private communications to a judge upon a matter publicly before him, such communications being a high contempt of Court.

Seem, that, for the purpose of discouraging improper applications for a supersedeas, the Lord Chancellor will not adjudicate upon a case in favour of the petitioner, where it clearly appears that improper means have been used in getting up the petition.

Although the great seal may withhold a commission, if not required for the protection of person or property, where the circumstances of the case create great difficulty in ascertaining whether there exists unsoundness of mind, it is a character to subject the party to the operation of a commission, yet every different consideration will regulate the discretion of

the Court in deciding upon an application for superseding a commission which has once regularly issued.

The existence of a delusion is the symptom or result of a diseased mind, and therefore so long as it continues, whether exhibiting itself more or less distinctly, there must still be unsoundness.

The most satisfactory proof of recovery from an unsound state of mind, is the conviction of the non-reality of the delusions which arose from the disease.

Semble. A commission will not be superseded when any declared illusions continue to exist.

A petition for a *supersedeas* having failed, the Court, under the circumstances, refused to make any order as to costs, but directed the matter on this point to stand over, by way of affording a security against the repetition of the application, except on proper grounds.

Where a petition for a *supersedeas* was presented in the name of a lunatic and was dismissed, the Court refused to make any order as to costs, although it was apparent that the petition originated with third parties, the Court considering that it had no power to make those parties pay the costs. *In re Dyce Sombre*, 1 Mac. N. & G. 116; 1 H. & T. 285.

MOTION.

Intercepting right.—Where the right of a party to an order for which he has given notice of motion is intercepted by a step taken by his adversary, he is entitled to his costs; but he should not bring on the motion, if the costs then incurred are tendered. *Newton v. Ricketts*, 11 Beav. 164.

PARTIES, OBJECTION FOR WANT OF.

Although the Court allows an objection for want of parties, at the hearing under the 39th Order of August, 1841, it will not order the costs of the proceeding to be paid to the defendant, but will reserve them until the hearing of the cause. *Lovell v. Andrew*, 15 Sim. 581.

SECURITY FOR COSTS.

A plaintiff by his bill described himself as resident within the jurisdiction. The defendant had some notice of his being resident abroad. The defendant answered, and on a subsequent amendment, a demurrer was allowed, with liberty to amend. The plaintiff having amended and described himself as resident abroad, the defendant obtained an order of course for security for costs: *Held*, under these circumstances,—1st, that such an order might be obtained as of course, though after answer; 2ndly, that it was not necessary in the petition for the order to state that an answer had been filed; and 3rdly, that though the defendant might have precluded himself from asking for security for costs in the suit as it stood before the last amendment, still he was not so precluded after the plaintiff, by amendment, stated himself to be resident abroad. *Wyllie v. Elliot*, 11 Beav. 99.

SOLICITOR.

1. *Proceedings to compel delivery of bill.*—An order of course requiring a solicitor to deliver his bill of costs within 14 days, not being obeyed, the next order is, that he may deliver it within four days or stand committed. *In re Baster*, 11 Beav. 37.

2. *Acting without authority.*—A solicitor taking a proceeding in a suit in the name of a person, without his authority, is personally liable to pay the costs, charges, and expenses occasioned to the other parties thereby, and such a proceeding having taken place in the Master's office, the Court, on the petition of the parties injured, ordered the costs, &c., to be taxed and paid by the solicitor. *Malins v. Greenaway*, 10 Beav. 564.

Cases in reporter's note: *Hall v. Bennett*, 2 Sim. & Stu. 78; *Allen v. Bone*, 4 Beav. 493; *Doe v. Roe*, 3 Dowl. 496; *Martindale v. Lawson*, 1 C. P. Coop. 83; *Tarback v. Woodcock*, 6 Beav. 581.

See *Legatee*.

SUING ON BEHALF, &c.

Where plaintiffs sue on behalf of themselves and others, the persons on whose behalf they sue are not liable to the costs of the suit. *Scott v. Pascall, Pascall v. Scott*, 15 Sim. 559.

TAXATION.

1. *After payment.*—Taxation after payment ordered, on proof of pressure, and on showing grounds for thinking that the bill would be considerably reduced on taxation. *In re Stadden*, 10 Beav. 488.

2. *Special agreement for costs.*—In proceeding under the Solicitors' Act, the Court is not authorized to interfere with a special agreement between solicitor and client, the legal effect of which is to alter the ordinary relation between solicitor and client, to supersede the authority or discretion of the Court, by giving to either party more or less than is warranted by the rules of the Court, or by providing for the settlement and payment of the bill in a special manner. *In re Eyre*, 10 Beav. 569.

3. A client agreed to pay his solicitor three guineas a day, in addition to the usual charges of a solicitor, for his travelling and other expenses. The Court, being of opinion that, under the common order of taxation, the Master would take the agreement into consideration, *held*, that its suppression, in obtaining an *ex parte* order, was not irregular. *In re Eyre*, 10 Beav. 569.

Case cited in the judgment: *Drax v. Scrope*, 2 B. & Ad. 581.

See *Contempt; Evidence*.

TRUSTEE AND CESTUI QUE TRUST.

Trustees can only be allowed costs out of pocket for professional business transacted by a firm, one of whom is a trustee, though the business be done by one of the partners who is not a trustee. *Christophers v. White*, 10 Beav. 523.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 2, 1850.

THE DEBATE ON THE CERTIFICATE DUTY OF ATTORNEYS.

It will have been observed by the daily newspapers, that Lord Robert Grosvenor, according to his notice, moved on Tuesday last, 26th February, for leave to bring in a Bill to repeal the Annual Certificate Duty on Attorneys, Solicitors, and Proctors. Before his Lordship rose to make the motion, there was considerable sensation in the House, from the presentation of petitions by an unusually large number of members, who, it thus appears, have well responded to the earnest request of their constituents in various parts of the country; and they not only were present at the sitting of the House, but continued at their post during the debate. We know that a very strong conviction generally prevailed, that the justice of the case was on the side of the petitioners, and that there could be no answer to it upon any right principle.

It will be admitted, that the Incorporated Law Society, acting on the part of the profession, were fortunate in inducing the noble representative of the Metropolitan county, in whose district a large number of practitioners reside, to take charge of their case. Indeed, the attorneys and solicitors in general must feel greatly indebted to Lord Robert Grosvenor for the able, earnest, and judicious manner in which he stated their claims to the House. It was manifest throughout his speech, that he sincerely felt the justice of the case; and the esteem in which the noble Lord is held by all parties,—his high rank and character, and his excellent judgment and urbanity,—ensured a more favourable hearing than could have been expected from almost any other member. We rejoice that at length the subject has been properly introduced, and

the main points brought prominently under the consideration of parliament.

It will be observed that his lordship condemned the unjustifiable circumstances in which the tax originated,—its increase from time to time during the war,—its continuance after the stamps on law proceedings were abolished as taxes upon justice,—its violation of every principle of taxation,—its *partiality*, no other profession being so taxed,—and its *inequality*, bearing alike in amount on rich and poor. He noticed the diminution of professional emoluments by the operation of the various reforms in the law, and the severe pressure of the tax on the larger part of the profession. The objection to the abrogation of the tax, on the ground that it excluded disreputable practitioners, was clearly answered, and his lordship pointed out the safeguards to the public by the *property qualification* of stamps on articles and admissions, by the premium to the master, and, above all, by an efficient examination into the character and attainments of the clerks. None of these safeguards existed when the Certificate Tax was first imposed, and if they do not operate usefully, the annual duty can have no such effect.

The practical advisers of the Government on such subjects, should recollect the danger of tempting needy men of small practice, who deeply feel the pressure of the tax, and who know that if it be not paid before the commencement of each year, they must be excluded from the Law List and rendered incapable of practising. We know not whether, as the time approaches, such persons may not increase the amount of their charges, to enable them to pay the tax, or when paid with difficulty to reimburse themselves,—setting up the excuse, insufficient as it may be, that the state is answerable for the injustice! In this view,

the tax may indirectly fall upon the suits, may encourage improper practice, and tend alike to the injury of the public and the character of the profession. We say not that such practice prevails, but we think the temptation to it, should be taken away.

It is manifest that if there were no Certificate Duty, but merely a small fee for annual registration, every attorney would keep his name on the *Register* for the sake of publicity in the Law Lists; he would transact business in his own name, and consequently be amenable to the Court for any misconduct. The tax, in fact, is calculated to produce an illegal mode of practice by which the annual payment may be avoided, and by which the difficulty is increased of detection and punishment in case of malpractice: thus the public is injured in a far greater degree than the revenue can be benefited.

It will be observed, that although Mr. Hayter, in moving the adjournment of the debate on the part of the Government, makes no admission of the justice of the claim, he has not stated a word in opposition to any of the facts or arguments brought before the house; and it may reasonably be expected that the suggestion made by Mr. Cockburn will be adopted; namely, that before the adjourned debate takes place, or rather before the financial plan is settled, the Chancellor of the Exchequer will duly consider the case of the petitioners, and render them the justice to which they are entitled.

The entry on the Votes and Proceedings of the house is as follows:

"Attorneys Certificate—Motion made and question proposed, 'That leave be given to bring in a bill to repeal the attorneys' and solicitors' annual Certificate Duty,' debate arising; debate adjourned till Friday 22nd March."

The reports of the debate in the daily newspapers, are each of them accurate so far as they extend; but none of them contain the entire debate. We shall, therefore, place the whole before our readers, corrected from various reports and from means of information to which we have had access.

A perfect host of hon. members (according to the report of *The Times*) rose in all directions to present petitions from solicitors, attorneys, &c., against these duties, in connexion with Lord Robert Grosvenor's motion, praying for the remission of the tax.

Lord R. Grosvenor said, that in the last session of parliament he had brought under the

notice of the house the case of a much more numerous class of persons than those on whose behalf he now rose. Even upon that point he found it no easy matter to obtain the attentive consideration of the house, accustomed as they were to deal with bodies of men of much superior magnitude. As he was now, however, about to bring under their notice the case of a smaller number of persons, he felt that he could scarcely hope for an attentive hearing, if he did not succeed in impressing upon the house this important and undeniable truth,—that the gentlemen whose claims he advocated were a body of men who discharged in this country functions of great moment. If the aphorism that "knowledge is power," applied with graver force to one class than another, it might be said that the class whose claims he was about to advocate had almost a monopoly of it. They practised a profession of great importance to the community, and there was scarcely any profession consisting of equal numbers whose members came more rarely before the public under disadvantageous circumstances. There was no profession in the members of which larger confidence was reposed, and if they were to divulge the secrets of which they were made the depositors, all the confessionals in the world would hardly furnish more striking or numerous examples of human weakness. Upon such grounds, he hoped, that they would look at the case which he had undertaken with unbiassed consideration. He hoped they would do this without allowing the feebleness of the advocate to prejudice the cause. He came before them, confident in the justice of that cause, and though the claims which it was his duty to urge might be resisted by his noble friend, yet he hoped he should receive the aid of the independent members of that house.

With reference to the nature, origin, and operation of the tax, he had a few words to say. Towards the close of the last century, Mr. Pitt imposed certain taxes, which proved so unpopular that he was obliged to abandon them, and so much pressed was he, and so difficult did he find it to discover objects of taxation, that he had recourse to most extraordinary means of providing for the necessities of the state, and at length a charge was made for the certificates of the attorneys, solicitors, and proctors. A tax was at the same time put upon warrants to prosecute, in order that each practitioner might be taxed according to the extent of his practice, but this was repealed as a tax on the administration of justice. The expense to practitioners was in the country 8*l.*, and in London 12*l.*, yielding in England 88,000*l.* in a year, and in the whole United Kingdom about 120,000*l.* Some reasons no doubt were given by Mr. Pitt for the imposition of this tax, but he was obliged to acknowledge that it was an impost inconsistent with the principles of taxation,—and no one could for a moment maintain that it rested on any sound fiscal principle. He (Lord R. Grosvenor) held, and was sure the house would agree with him,

that a tax levied as this impost was, ought to be equally, or if there were any inequality it should press most heavily on those who were least able to bear it. Now, the tax at present under consideration, was diametrically opposed to all the recognized principles of taxation. There were many taxes, but this was not one of the number, of which it might be said that, in proportion as those individuals least able to bear the tax were relieved from its pressure, the proceeds of the tax were, generally speaking, increased. A tax, to be consistent with the principles of taxation, must be general and must press equally. The present tax was not a general one. Its very name showed that it was partial, for it was levied on the attorneys, but not on the barristers, and on the legal and not on other professions. Then as to its equality—by the income tax they had equality to some extent, and they left out those whose incomes were under 150*l.* a year. It might happen, for example, that three per cent. upon the profits of attorneys would prove less onerous to them as a body, and more advantageous to the revenue than the sums now charged. On the income of some practitioners 12*l.* per annum might amount to not more than one-half per cent. while to others it might be more than 10 per cent.

It had, he knew, been often argued that attorneys and solicitors levied large contributions upon the public; but the obvious answer to that was, that so long as a tax was levied, they must do so with diminished gains, and it was a very inconvenient and unjust way of diminishing their gains, to levy upon them a tax inconsistent with all known principles of taxation. Indeed, many acts of parliament had been passed, materially diminishing their emoluments, such as the Bankruptcy Court Act, the Law Amendment Act, the Fines and Recoveries Act, the County Courts Act, and many others. It was also said, that in effect the certificate tax was paid not by the attorneys, but by their clients. It would be easy to show that that was not the case; for if it were, why should the attorneys petition in thousands against it? but admitting that the tax did fall on the suitor, that, in his opinion, formed an additional reason for abolishing it.

Again, it was not to be forgotten, that this branch of the profession of the law, like other professions, contained many members who were by no means in opulent circumstances, and to them the payment of such an impost as the certificate duty was an affair of very grave importance. Of his own knowledge, he could say that many attorneys were at the present moment in extreme distress, and recent acts of parliament had rendered their profession anything but a lucrative pursuit. Further, he might add, that the profession of the law had lost 40,000*l.* a-year by being deprived of the discount on stamps, and, in his opinion, the

the Uniformity of Process; Costs in Pleading; Abolition of Leases for a Year, and Assignments of Outstanding Terms.

whole reformer period from both was most injurious to the morality, and the independence of the subordinate functionaries of the profession. He hoped, in pressing this subject upon the fair consideration of the House, he should be followed by Honourable Members much better qualified than he could pretend to be, to do justice to the claims of attorneys and solicitors, but there were a few additional observations which he could not refrain from making.

It had been said that the existence of this tax operated as a means of preventing an undue influx of young practitioners who would otherwise overstock the profession. However true that might be, his answer to it was, that parliament should not do anything in order that good might come of it; but upon this part of the subject, his lordship would read an extract from the statement of the Secretary of the Incorporated Law Society. "As the Registrar of Attorneys and Solicitors, he had received numerous complaints that attorneys practising in a limited and inferior class of business received emoluments from other attorneys who are unable to take out their certificate, and who practice in the name of such certificated attorneys and participate in the profits of the business, contrary to the express provisions of the statute, and to the injury of the public. By these means they not only evade the payment of the duty, but commit acts of mal-practice and oppression against the poor suitors of the Court, and generally escape punishment. For if complaint be made against the attorney in whose name the mal-practice took place, he denies that he authorised the use of his name, and generally there is no sufficient evidence to contradict him." But supposing that they repealed the duty, was there nothing left as a barrier to the introduction of improper persons? There was the stamp duty on the articles of 120*l.*; the stamp on admission of 2*l.*; and a premium of 900*l.* or 300*l.*, paid to the master. And above all there was the examination of the clerks before admission, not only as to their legal, but their general knowledge; and if that were not enough to make the profession respectable, depend upon it that no other hindrance in the shape of fiscal regulation would be sufficient.

With reference to the removal of this tax, or the removal of any other, it would, of course, be necessary to consider the condition of the general revenue of the country. In the present year is much as 2,000,000*l.* supposed to be taken off; but even supposing this right honourable friend the Chancellor of the Exchequer were not to have any great surplus, some other tax might be imposed in lieu of this, equally productive, but a less partial and unjust impost. With these few observations he would leave the case in the hands of the House, confiding in their discretion, their sense of justice, and of expediency. The noble lord concluded by moving for leave to bring in a bill to repeal the attorneys and solicitors annual certificate duty.

Sir De Lacy Evans seconded the motion.

Mr. Hayter said, he hoped the house would hold him excused if he did not then enter into any discussion of the question which the noble lord had brought before them, and he ventured to hope that the greater portion of the honourable members now present would concur with him when he took the liberty of suggesting the expediency of postponing the motion for some time. It would be in the recollection of the house that the noble lord at the head of the government had very recently stated that his right honourable friend the Chancellor of the Exchequer would probably be prepared on Friday, the 15th of March, to lay his annual financial statement before the house. He hoped that honourable members would not overlook this, that if the proposition of the noble lord were agreed to by the house, it would lead to a very material diminution of the public income, amounting to upwards of 120,000*l*. The house was also to recollect, that in such a motion a principle of very extensive operation was involved—a vast variety of persons were taxed for *licences*² to carry on their business, and the success of the noble lord's motion, if it were possible, must materially effect a very great amount of revenue—little less, perhaps, than 1,600,000*l*., a question certainly too large and important to be gone into before the Chancellor of the Exchequer brought forward his statement. In dealing with such a question they were dealing with thousands—one member demanded the abolition of all taxes on knowledge, as they were called; another desired to get rid of the tax upon bricks; while the member for Bridport was very urgent on the subject of timber. Even a portion of these demands would be sufficient to absorb the whole surplus. Under those circumstances, he did hope that the noble lord would postpone his motion, or rather that the house would permit him (Mr. Hayter) to suggest that the debate be adjourned till after the budget, when the views of the government would be laid before the house as to the appropriation of the surplus, and then all claimants for a share in the surplus might be considered, and those who made out the best case would doubtless receive relief. On these grounds he moved that the debate be adjourned till Friday, the 22nd of March.

Sir F. Thesiger feared it would be useless for the noble lord to resist this old official mode of procedure. Almost all governments endeavoured to procrastinate, and independent members had slight chance of bringing forward

any proposition which ministers wished to oppose. Under those circumstances he hardly knew which course to adopt. If the noble lord pressed his motion to a division, he (Sir F. Thesiger) should certainly support him by all the arguments which occurred to his mind, but the noble lord might find it necessary to accept the suggestion just made, and agree to adjourn the debate till after the financial statement. He could hardly help observing that a Chancellor of the Exchequer having a surplus at his command was in a more lamentable condition than one labouring under a deficiency, Mr. Pitt, in laying on a tax, experienced not so much embarrassment as his successors would probably find in taking one off. Possibly, under these circumstances, the noble lord would accept the suggestion made by the Secretary to the Treasury and adjourn the debate.

Lord R. Grosvenor replied, that he should be glad to hear the opinion of independent members as to the question of adjournment. Private members were placed under great disadvantages in cases of this kind. This was the third time that he had given notice of the present motion, and it was the first occasion upon which he had any opportunity of being heard: as, however, the hon. and learned gentleman who spoke last recommended adjournment, he should not resist that proposition. He had, therefore, no alternative but to accept the advice of the hon. and learned gentleman (Sir F. Thesiger), who must understand better than himself the feelings of the profession, and to acquiesce in the motion for postponing the debate.

Mr. Cockburn had come prepared to support the motion of the noble lord, but he quite concurred in the impossibility of pressing the motion after the appeal made by the right hon. gentleman (Mr. Hayter.) He trusted that in the interval the government would take the matter into their most serious consideration, for the tax was one of the most unjust and oppressive at present existing. The attorney paid the income-tax upon his income, and the property-tax, if he had property, and why should parliament make him pay an additional sum on account of his profession, whether barrister, physician, clergyman, architect or any other? It was true that there were numerous other applicants for the surplus revenue, yet the demand now made for the remission of this tax was one of justice, and the house were bound to be just before they were generous. (Hear, hear.)

Colonel Chatterton was prepared to support the motion, but he perfectly agreed that it would be better now to defer the discussion.

Sir De L. Evans hoped it would go forth that the motion had not been met by a negative, but that the debate was merely adjourned.

The debate was then adjourned to Friday the 22nd March.

A List of the Petitions, 170 of which were sent up to the Metropolitan and Provincial Law Association, shall be given in our next number.

² In the course of the debate, Lord R. Grosvenor pointed out that the *licences* of auctioneers, pawnbrokers, and others, were totally dissimilar from the *stamp duty* paid by the legal profession, the members of which had to serve a term of five years and to undergo an examination in order to qualify themselves for admission. There is not a single licence bearing analogy to the certificate of the attorney.

RECENT DECISIONS UPON THE COUNTY COURTS ACT.

THE Common Law Courts held sittings in the early part of this week, pursuant to previous announcement, for the sole purpose of delivering judgment in cases already argued. The judgments delivered on this occasion were numerous, and many of them of great importance. The Courts were called upon, in several cases, to put a construction upon various provisions of the County Courts' Act, (9 & 10 Vict. c. 95,) and it is proposed to limit the present notice to a reference to such of the late decisions upon this act as may be deemed peculiarly interesting to the profession.

The 91st section of the act, as our readers are aware, provides, that "*for appearing or acting in the County Court on behalf of any other person, no attorney shall be entitled to recover any sum of money, unless the debt or damage claimed shall be more than 40s.,—or to have or recover more than 10s. for his fees and costs, unless the damage claimed shall be more than 5l.,—or more than 15s. in any case within the summary jurisdiction given by the act.*" Soon after the act came into operation, the Court of Queen's Bench decided, in *Ex parte Clipperton*,¹ that an attorney could not recover a sum beyond 15s. in respect of any services rendered in regard to a plaint proceeded with in the County Court. The monstrous injustice and hardship caused by that decision, which in effect prohibited persons desirous to sue, or about to be sued, in a County Court, from obtaining competent professional assistance, made it expedient to obtain the opinion of one of the other Courts of Law upon the question. Accordingly, in a case of *Keighley v. Gardiner*,² in the Common Pleas, where the plaintiff, an attorney, delivered a bill to his client for 20l. 19s. 2d., for services part of which were rendered before the client had determined to proceed under the County Courts' Act, and the other part during the pendency of a plaint in the Edmonton County Court respecting the same subject-matter, and the Master considered himself bound by the decision of the Queen's Bench already referred to, and taxed off the whole of the bill, except 15s., a rule was applied for and granted to review the taxation, avowedly with the intention of reconsidering the de-

cision of the Queen's Bench. That rule was argued in Trinity Term last, and has since stood over for judgment, and on Monday last the Court of Common Pleas announced, that notwithstanding the opinion of the Court of Queen's Bench, they could not come to the conclusion that an attorney was to be deprived of costs for services rendered under such circumstances, and therefore directed the Master to review his taxation. If this well-considered view should be adopted by the other Courts—as we see no reason to doubt it will be—the practice in respect of County Courts' cases will be placed on a more satisfactory footing, and the fees specified in the act confined, as it always seemed to us they ought to have been, to "*appearing and acting*" in Court.³

The 58th section of the 9 & 10 Vict. c. 95, provides, that the County Court shall not have cognizance of any action in which the title to corporeal or incorporeal hereditaments shall be in question; and in a case of *Thompson v. Ingham and others*, where a prohibition was applied for on the ground that the title did come in question, the objection was taken that, from the nature of the action, the question could only arise upon the evidence, and that the decision of the judge of the County Court on this matter was conclusive, and could not be reviewed by the Superior Court. It appeared upon the affidavits, that the action was for use and occupation, and that at the trial the question was raised, whether the title came in question; and the learned judge was of opinion that it did not. The Court of Queen's Bench, after taking time to consider, now resolved that the decision of the County Court Judge was not final, and that it was competent for the Superior Court to determine the question, which might be done either by issuing a writ of prohibition, upon which the facts might be put in issue, or by affidavits. Upon these grounds the Court determined for the plaintiff, thus holding that the question whether the title is involved is a matter upon which there is to be practically an appeal from the decision of the judge of the County Court.

In a case of *Houlden v. Smith*, the question arose, whether a County Court judge has power to commit a judgment debtor under the 98th section of the County Courts' Act, when the debtor is not resident within the district of the judge making the order for committal. The plaintiff in this action had a judgment recovered against

¹ Leg. Obs. vol. 36, pp. 53, 530.

² Leg. Obs. vol. 36, pp. 110, 400.

³ See a full report of this case, p. 348, post.

him in the County Court of Middlesex, and that he had not paid this debt, was a writ, which, reading in conjunction with the service of the summons to attend at the County Court, and the defendant's failure to appear, and the judgment of the County Court, was a judgment in law, and not a judgment in fact. The plaintiff did not attend the summons, and the defendant was a judge of the County Court, thereupon made an order to commit the plaintiff to the gaol or to the stocks for 14 days for contempt of court in not attending at the County Court pursuant to the summons. The plaintiff was committed under this order and brought the present action. The Court of Queen's Bench now held, that the order for commitment was clearly within the jurisdiction of the County Court, and gave the judge power to issue a judgment summons in cases where the defendant dwelt or carried on business in the district. It was plain the summons in this case issued under a mistake of law, and not of fact. The question, therefore, was, whether the defendant, as a judge of a Court of Record, was protected for acting without jurisdiction under a mistake of law. The Court could find no authority establishing such a principle, and therefore held that the judge was not protected by the Common Law. It had been said, however, that the defendant was protected by statute. Undoubtedly, there were statutes which entitled a judge of a Court of Record sued for acting illegally within his jurisdiction, to plead the general issue, though under the existing law such a plea must expressly state by a memorandum in the margin, that the general issue was pleaded by statute. In the present case the general issue was pleaded without any such memorandum in the margin, but at all events, the right to plead the general issue and give special matter in evidence under it, was totally distinct from what was sought to be set up as a defence in this case, namely, that a judge acting without jurisdiction was protected by statute. The Court could find no statute affording such protection, in a case where a judge acted without jurisdiction, and the judgment must therefore be entered for the plaintiff.

We venture to assume that it will be deemed satisfactory by our readers to be put in possession of the judgments in these cases at the earliest opportunity. The other judgments of importance pronounced in the Common Law Courts on Monday and Tuesday last, will be adverted to in a future number.

LEGAL ATTENDANCE OF THE BAR AND THE COUNTY COURT JUDGES.—The question for the Court of Insolvent Debtors to decide was, whether the members of the Bar have a right of exclusive audience or of precedence in this Court, when cases of insolvents are under consideration. The learned judge of the County Court, who had been called upon to decide the question, had decided in favour of the Bar, and the question was now before the Court of Insolvent Debtors.

The question which I am called upon to decide is, whether the members of the Bar have a right of exclusive audience or of precedence in this Court, when cases of insolvents are under consideration.

I am of opinion, that they have not a right to exclusive audience or to precedence in such cases.

First, as to the claim of exclusive audience. The determination of this question must, of course, principally depend on the construction of the 9 & 10 Vict. c. 95, and the 10 & 11 Vict. c. 102.

By the 91st section of the former act, it is provided, that "No barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question in counsel, for any other person in any proceeding in any Court holden under this act." From this provision, it is clear that the members of the Bar can have no right to appear in this Court, even to argue any question in any proceeding there, much less to conduct any case there; as conferring the privilege is entirely in the discretion of the judge. The question then, is how ought the judge to exercise his discretion? There can be no doubt he ought to exercise it in conformity with the object of the act. Now the language of the preamble, the limited amount of the claims recoverable in the Court, the scale of fees provided, and the language of the section under discussion, clearly show that the object of the legislature was to provide cheap as well as prompt remedies for the suitors of the Court. But to require the suitors to employ a barrister in all cases where they desire the services of an advocate, would be directly to frustrate that object; as by the rule of the profession, a barrister must be instructed through the medium of an attorney, and the amount of fee to be paid to him is much higher than that of an attorney. The suitors, therefore, would be compelled in effect, to employ two advocates, and to incur more than double expense. I am, therefore, of an opinion, that upon the proper construction of the 9 & 10 Vict. c. 95, the members of the Bar have not a right to exclusive audience in the County Court, in cases other than those of insolvents. The construction of the act, and the practice under it, have been in universal conformity with this view.

The next consideration is whether the act of the 10 & 11 Vict. c. 102, established the new rule of practice with reference to the jurisdiction in insolvency which the act transfers. By the 10th section of that statute it is provided,

with reference to the Court's jurisdiction, and the dispatch of business, that it shall be competent for the Court of Insolvent Debtors to make an order referring such petition for hearing to the County Court, within the district of which such insolvent debtor is in custody, and shall transmit such petition and schedule to such Court for hearing accordingly; and that the Judge of such Court shall appoint a time and place for such prisoner to be brought up before such Court, and cause the usual notices to be given; and that any Court to which any such petition shall be so referred and transmitted, shall have and possess the same power and authority with respect to every such petition, and shall make all such orders, give all such directions, and do all such matters and things requisite for the discharging or remanding of such prisoner, and otherwise respecting such prisoner, his schedule creditors and assignees, as the said Court for the relief of insolvent debtors or any commissioner thereof might make, give, or do, in the matters of petitions, heard before such Court or Commissioner under such acts; and that every such petition and schedule, and all judgments, rules, orders, directions and proceedings, pronounced made and done thereon, in all and every the matters aforesaid, by such County Court, shall be returned to the said Court for the relief of insolvent debtors, signed by the Judge of such County Court, to be a record of the said Court for the relief of insolvent debtors, and to be kept as such among the records thereof. Some further powers are then conferred on the County Court for the enforcement of its proceedings. It will be seen by the words of the section, that no provision is made, or direction given, for any peculiar mode of exercising the new functions with which the Court is invested. In the absence of such provision or direction, the practice of the County Court is the only one which can prevail. But by that practice the members of the Bar possess no right of exclusive audience. Therefore they possess no such right in the dispatch of the insolvent business of the Court. With reference to this branch of the subject a remark might probably be made, to which, perhaps, much weight in the construction of an act of parliament is not to be attached. If in cases, other than those of insolvency, the assistance of an advocate were required, the suitor would, however wealthy, not be obliged to employ a barrister. But if he confessed himself to be absolutely insolvent, he would be compelled to employ one; that is, the poorer he is the greater the amount of expense he is obliged to incur. That, however, is an argument *ad inconvenientiam*, which of course ought not to interfere with the construction of the statute if the language of it is express.

"Independently of the statutes to which I have referred, it is clear on principle, as well as on authority, that every Court must be guided by its own rules, in disposing of the business before it, whether that business has been introduced into that Court or delegated or removed to

any other Court, and that the same principle will support of this principle may be found, I will only mention one which is strictly analogous. By the 3 & 4 W. 4, c. 42, s. 17, a power is conferred on the Courts at Westminster, to direct issues to be tried before the sheriff where the claim endorsed on the writ does not exceed 20*l*.

"The Bar at Westminster have exclusive audience in the cases tried there, yet in the conduct of the cases tried before the sheriff in pursuance of the writ of trial, the constant and unimpugned practice has been during the last 15 years for attorneys to act as advocates.

"Secondly, with respect to the question of *pre-audience* on the part of the Bar. It seems to me that the same reasons, arguments, and authorities, which lead to a conclusion against the exclusive audience of the Bar, apply with almost the same force against *pre-audience*, for the effect of *pre-audience* would be indirectly to compel the suitors to employ counsel in order to prevent the delay consequent on the *pre-audience* of the Bar. If *pre-audience* is to exist, my opinion is, that it can only exist as a matter of courtesy between the different branches of the profession, and not as a matter of right.

"For these reasons I am of opinion that the members of the Bar are not entitled, as a matter of right, either to *exclusive audience* or to *pre-audience* in any proceedings in the County Court of this circuit.

"When this question was first raised before me, I stated that I would consult the Attorney and Solicitor-General in order to ascertain their views upon it. I have done so, and I have the gratification of knowing that the opinions of those two eminent legal personages are in conformity with the one I have now expressed.

"For the future, the practice on this circuit will be regulated by that opinion."

IMPROVEMENT OF THE COUNTY COURTS.

Our readers are aware that it is intended, under a Commission issued by the Lord Chancellor to Mr. Serjeant Dowling and four other Judges of the County Courts, to revise the rules for regulating the course of practice and proceeding in the County Courts. Our pages have furnished many hints towards the improvement of the Courts; and we are glad to observe that in the last number of the *Lava Magazine*, there is an able article on this subject containing various suggestions, which, no doubt, the learned Commissioners will take into their consideration. We shall for the present advert to two points, which will be interesting to a large class of our readers, namely, the persons best qualified to fill the office of High Bailiff in the County Courts, and

the right of the Attorneys of the suitors to effect a service of the process of the Court, as they do in the Superior Courts, instead of such service being always delegated to the messengers of the Court.

"The 31st section relates to the appointment of the high bailiffs of the courts. We are inclined to think that it would have been better if the law had required that the high bailiff should be, or should have been, an attorney-at-law. The more important duties and responsibilities of the office, those relating to executions and the arrest of persons committed to prison, greatly resembles the duties and responsibilities of under-sheriffs. They are of such a nature as to be best performed by lawyers. So generally has this been felt, that the law prohibiting an attorney from acting as an under-sheriff was for a very long period almost universally disregarded, and has, we believe, been lately repealed. Had lawyers been appointed high bailiffs, we think they would have entered upon the discharge of their duties with a better sense of the responsibilities of their office than appears to have been generally the case. Their professional knowledge and habits would have enabled them to have discharged their duties with less inconvenience to the suitors and greater ease and safety to themselves, and would, moreover, have guided them in requiring proper securities and indemnities from their officers and from parties interested.

"We feel confident that many of the losses sustained by high bailiffs, and many of the complaints against them and their officers, would not have occurred had the high bailiffs possessed the experience and knowledge likely to be attained in the course of professional education and practice. Experience and knowledge of this sort have now been gained by many intelligent and respectable high bailiffs; and complaints against them and their officers are becoming more rare. Since the establishment of the Courts some of the judges have been under the necessity of discharging high bailiffs for misbehaviour, in exercise of the power for that purpose contained in the 31st section.

"Upon the whole, we think it would be right to restrict the judges, in the future appointment of high bailiffs, to the selection of those officers from among attorneys and solicitors. In addition to the reasons we have stated for this suggestion, we think the appointment of lawyers to offices established under this new system might be regarded as some compensation (though very slight) to the profession for the losses which it sustains by reason of the change. A series of modern improvements of the law has made the profession a less and less lucrative pursuit. Of this, as a hardship, the professional men are, as a body, too public spirited to complain. They are not the less entitled to the benefit of any fair opportunity of compensation.

"The large taxes they pay upon becoming

articled clerks, and upon being admitted attorneys, and during their practice, give them, though not such a vested interest in the accustomed emoluments of their profession as to stand in the way of legislation, yet a fair claim to be considered in the appointment to newly-created offices concerning the administration of justice.

"By the 31st section, the power of the high bailiff to appoint assistants is limited, so as not to exceed such number as shall from time to time be allowed by the judge. As the high bailiff is responsible for the execution of all the process of the Court, it cannot be right to limit his power to provide himself with such assistants as he may himself deem requisite. In this respect he ought not to be subject to the power of the judge, or any other person, so long as his responsibility is of its very properly unlimited character.

"The 33rd section requires the high bailiff, by himself or his assistants, to serve all the summonses or orders, and execute all the warrants, precepts and writs, issued out of the Court. So far as serviceable process is concerned, we could not at first understand the reason for this enactment.

"The service of process from other Courts is effected by persons employed by the parties or their attorneys; and it can be of no consequence to the persons served whether he receives it from the hands of a public officer or that of any other person.

"On consideration, however, we think the object must be to prevent the process getting into the hands of low, unprincipled persons; who, if process might be served by any person, would be hanging about the Court and its offices, inducing ignorant suitors to employ them. It is manifest many abuses and inconveniences would follow, including, extortion and oppression, practised by persons over whom the Court would have no control.

"The present plan is not without its inconveniences.

"Parties often make unreasonable complaints of process not being served, although every proper exertion has been made; and there are, no doubt, cases in which, from the officers being well known, services cannot be effected by them, which might be effected by others. The loss of the money expended in suing out unserved process is often a serious affair to the party.

"Upon the whole, we think the inconvenience of permitting the parties to take charge of serviceable process would exceed that of placing it in the hands of an officer of the Court. Nevertheless, we think it ought to be entrusted, if required, to any attorney at law who sues it out. He would, as in the case of process of the Superior Courts, exercise his judgment as to whom to employ, and as to what steps to take in order to effect a service. This remark

¹ These observations of the learned editor are written in a just and liberal spirit towards the larger branch of the profession.—Ed.

in *two* think, peculiarly applicable to subpoenas, often applied for on the eve of trial, when it is impossible for the officers to serve them consistently with the discharge of their other duties.

"The 32nd section makes the payments by the high bailiff to his bailiffs and officers subject "to such scale of remuneration as shall be from time to time approved by the judge." This we think unreasonable. The very next sentence makes the high bailiff answerable for the acts and defaults of his bailiff. This involves important pecuniary liabilities. The office of high bailiff is not a lucrative office. The discharge of its duties effectually, with a due regard to economy and the risk incurred, is a matter of serious import, in which the officer must be guided by experience gained from time to time. It is a matter so personal to himself that he ought not to be controlled in it by any one, so long as his responsibility continues unlimited. That it should continue unlimited is essential to the efficiency of the Court."

OBJECTIONS TO THE CHANCERY REFORM BILL.

MR. PURTON COOPER has just published a pamphlet, addressed to the Solicitor-General, on his bill to simplify and improve the proceedings in the Court of Chancery in Ireland; and which it appears probable will be extended to England. Mr. Cooper has particularly directed his attention to that part of the project which provides that a party entitled to file a bill may apply to the Court by *petition* for the relief which might have been prayed for by the bill.

The objection made to this clause is, that it applies to *all* cases and not to such only as appear adapted to the proceeding by petition. Mr. Cooper observes,—

"That there are cases to which the proceeding by Petition is not so well adapted as the proceedings by Bill and Answer, you are obviously sensible, as is manifested by the third clause of the Bill—'If it appear to the Court at any time that the relief prayed for by the Petition cannot be safely or conveniently granted, or that the object of it cannot be safely or conveniently obtained under the procedure of the Act, it shall be lawful to the Court to direct a suit to be instituted by Bill and Answer, and either to retain or dismiss the Petition.'

"It is therefore unnecessary for me to show that Bills and Answers cannot be entirely abolished. Persons engaging in Chancery litigation may desire relief which cannot be safely or conveniently granted—they may have objects which cannot be safely or conveniently obtained—by Petition; and yet, will not such persons resort to Petition, and not to Bill and

Answer? Will not this happen more frequently than you at present imagine? Will not the Court very often have occasion to direct a suit to be instituted by way of Bill and Answer, and either to retain or dismiss the petition? and will not this produce disappointment, delay and expense?

"Parties seldom form a just conception of their rights and of the means by which the same can be established. They are too apt to think that their statements must produce conviction at once. They will not understand that the facts alleged can possibly be so far controverted as to create a doubt in the mind of a judge of learning and sagacity. They may admit that the circumstances out of which their equities arise are perplexed; but, say they, the perplexity is not so great that there will be any difficulty in the disentanglement. The fraud of which they complain is apparent to their own eyes, and it may therefore, as they fancy, easily be rendered evident to the eyes of others.

"Experience, as it seems to me, teaches us that what I have described is a common failing of plaintiffs; and if that be so, will they not repeatedly be led by it to the adoption of a Petition rather than Bill and Answer, when nevertheless justice can be reached only by means of the latter procedure? Another cause of such preference will be the prospect held out by the act of diminished expense and more speedy adjudication. This will make many plaintiffs close their ears to all representations of the inaptitude of the new procedure to their particular cases.

"I fear, therefore, that applications by Petition, in which it will appear to the Court that the relief prayed by the Petition cannot be safely or conveniently granted, or the object of it cannot be safely or conveniently obtained, and in which the Court will find it requisite to direct a suit to be instituted by way of Bill and Answer, will be numerous; and in those instances the Act itself will have produced the evils which it was expressly intended to destroy."

The answer to these objections must be considered hereafter.

NOTES OF THE WEEK.

PROMOTIONS AT THE COMMON LAW BAR.

THE following members of the Bar have been recently promoted to the rank of Queen's Counsel:—

Messrs. *Biss* and *Granger* of the Northern Circuit.

Messrs. *Peacock* and *James* of the Home Circuit.

Messrs. *Prendergast* and *O'Malley* of the Norfolk Circuit.

Mr. *C. Rowe* of the Western Circuit.

Mr. *K. Micauley* of the Midland Circuit.

Mr. *Townsend* of the North Wales Circuit.

LIST OF SHERIFFS, UNDER SHERIFFS,

GREAT BRITAIN & IRELAND, 1831.

and Sheriffs are granted in Town & Breconshire, Cardiganshire, Flintshire, Merionethshire, Durham, Eborac, Gloucestershire, Gloucester City, Herefordshire, Kingston-upon-Hull, Lancaster City, York City, and the Welsh Counties, not before named.

Office Hours, in Town, near York, &

ENGLAND.

Counties, &c.	Sheriffs.
Bedfordshire	Richard Thomas Olpin, of Houghton, Esq.
Berkshire	Robert Alfrey, of Wakefield-park, Esq.
Berwick-upon-Tweed	William Elliott, of Ravensdown, Esq.
Bristol, City of	John Jasper Leigh Bayley, of Hill-house, Gloucestershire, Esq.
Buckinghamshire	William Selby Lowndes, of Whaddon-hall, Esq.
Cambridge and Hunts	John Vipian, of Sutton, Isle of Ely, Esq.
Canterbury, City of	Thomas Phillips Lasaux, of Canterbury, Esq.
Cheshire	Sir Arthur Ingram Aston, of Aston, Esq.
Chester, City of	Edward Russell Selter, of Pepper-street, Chester, Esq.
Cirencester, City of	His Grace the Duke of Wellington
Cornwall	Sir Samuel Thomas Spry, of Tregolls, near Truro
Coventry, City of	Act 5 & 6 Vict. c. 110, s. 10, abolished the Office of Sheriff for this City.
Cumberland	Thomas Selkirk, of Holm-hill, near Carlisle, Esq.
Derbyshire	Robert Arkwright, of Sutton, Esq.
Devonshire	William Arundel Yeo, Framington, Esq.
Devonshire and Cornwall	Henry Ralph Willett, Merthmonte, Wimbourn Minister, Esq.
Edinburgh	Robert Milnes, Hoveley, Esq.
Essex	Thomas Birch Western, of Felix-hall, Esq.
Exeter, City of	William Denis Moore, of Exbury, Esq.
Gloucestershire	Thomas Gambler Parry, of Higham-court, Esq.
Gloucester, City of	William Henry Barnett, of Gloucester, Esq.
Hampshire	Joseph Martinian, of Basing-park, Esq.
Herefordshire	James Cheese, of Huntington, near Kingston, Esq.
Hertfordshire	Felix Southwell Greville, of North Mimms, near Hatfield, Herts.
Huntingdon & Cambridge	John Vipian, of Sutton, Isle of Ely, Esq.
Kent	Matthew Hall, of Beattie-house, Bishopsbourne, Canterbury, Esq.
Kingston-upon-Hull	Anthony Bantister, of Kingston-upon-Hull, Esq.
Lancashire	Clement Roys, of Mount Felling, Esq.
Leicestershire	Thomas Stokes, of New-park, near Leicester, Esq.
Lincolnshire	Henry Fane, of Enibock-hall, Esq.
Lincoln, City of	Stephen Harrison, of Lincoln, Esq.
Litchfield, City of	Ralph Harris, of Litchfield, Esq.
London, City of	William Lawrence, of Breadstreet, Chancery, Esq.
Middlesex	Donald Nicoll, of Cornhill, Esq.
Monmouthshire	Charles Bayley, of Abernethy, near Aberdare, Glamorganshire, Esq.
Newcastle-upon-Tyne	Ralph Dodds, of Prudhoe-street, Newcastle-upon-Tyne, Esq.
Norfolk	Edward Rogers, of Rye-hall, Norfolk, Esq.

(of Norway))

322 List of Sheriffs, Under-Sheriffs, Deputies, and Clerks, of the Superior Courts :

Norwich, City of	James Colman, of Norwich, Esq.	..	..	..	..
Northamptonshire	William Bruce Stopford, of Drayton-beacon, Esq.	..	..	..	..
Northumberland	Sir Walter Calverley Trevelyan, of Widdington, Bart.	..	..	..	..
Nottinghamshire	The Right Hon. Edward Strutt, of Kingston-hall, Esq.	..	..	..	..
Nottingham, Town of	Thomas Ashwell, of Nottingham, Esq.	..	..	..	..
Oxfordshire	Henry Hall, of Barton, near Woodstock, Esq.	..	..	..	..
Poole, Town of	Henry Harris, of Poole, Esq.	..	..	..	..
Rutlandshire	The Hon. William Middleton Noel, of Kettton, Esq.	..	..	..	..
Shropshire	Ralph Merriek Leeks, of Longford-hall, Newport, Esq.	..	..	..	..
Somersetshire	Langley St. Albyn, of Alfoxton, Esq.	..	..	..	..
Southampton, Town of,	John Traffick Tucker, of Southampton, Esq.	..	..	..	..
Staffordshire	Josiah Spode, of Armitage-park, near Rugeley, Esq.	..	..	..	..
Suffolk	Sir Thomas Rokewood Gage, of Hangrave-hall, Bart.	..	..	..	..
Surrey	James William Freshfield, of Moore-place, Betchworth	..	..	..	..
Sussex	George Caspion Courthope, of Whiligh, Ticehurst, Esq.	..	..	..	..
Warwickshire	Darwin-Galton, of Edstone, Esq.	..	..	..	..
Westmoreland	George Edward Wilson, of Haverham, Esq.	..	..	..	..
Wiltshire	Henry Gaisford Gibbs Ludlow, of Heywood-house, Westbury, Esq.	..	..	..	..
Worcestershire	John Gregory Watkins, of Woodfields, near Ombertley, Esq.	..	..	..	..
Worcester, City of	John Goodwin, of Worcester, Esq.	..	..	..	..
Yorkshire	William Rouse, of Newby Waske, Esq.	..	..	..	..
York, City of	William Hotham, of Fulford, near York, Esq.	..	..	..	..

NORTH WALES.

Anglesey	Richard Griffith, of Bodowyr-isaf, Anglesey, Esq.	..	..	..
Carnarvonshire	Isaac Walker, of Minerva-hall, Wrexham, Esq.	..	..	..
Denbighshire	John Burton, of Minerva-hall, Wrexham, Esq.	..	..	..
Flintshire	Beddolph William Basil Giscard Fleming, of Darvining	..	..	..
Merionethshire	Edward Griffiths, of Gwastadfryn, Esq.	..	..	..
Montgomeryshire	John Davies Corrie, of Dyserth, near Welchpool, Esq.	..	..	..

SOUTH WALES.

Breconshire	Sir Charles Morgan Robinson Morgan, of Tharw, Brecon, Bart.	..	..	..
Cardiganshire	Thomas Davies Lloyd, of Brenwydd, Esq.	..	..	..
Carmarthen, Borough of	John Lewis, of Lemmas-street, Carmarthen, Esq.	..	..	..
Carmarthenshire	William Harris Campbell Davies, of Noyaddfaur, Esq.	..	..	..
Glamorganshire	Bowland Fothergill, of Hensol-castle, Esq.	..	..	..
Haverfordwest, Town of	Henry George Fownes, of Haverfordwest, Esq.	..	..	..
Pembrokeshire	William Richards, of Tenby, Esq.	..	..	..
Radnorshire	Edward Morgan Stevens, of Crychell, Llanano, Esq.	..	..	..

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Marks v. Solomons. Feb. 1, 1850.

WILL. — CONSTRUCTION. — INTEREST OF WIDOW.

Upon construction of will, held, reversing the

decision of the Vice-Chancellor of England, that the widow of the testator was only entitled to the interest of monies invested in the loan societies, for life only—but as to the friendly societies, absolutely.
THE testator, George Joel, by his will dated

Joseph Colman, of Norwich, Esq.	Andrew Storey, 17, Featherstone-buildings.
J. Archbould, of Thrapstone, Esq., (A. U. Messrs. Markham, of Northampton)	R. B. Sanders, 1, New-inn, Strand.
Charles Muzay Adamson, of Newcastle-upon-Tyne, Esq.	Messrs. Pringle, 3, King's-road, Bedford-row.
Francis Jessop, of Derby, Esq. (A. U. John Brewster, of Nottingham, Esq.)	Messrs. Smedley and Rogers, 40, Jermyn-street, St. James's.
Christopher Swann, of Nottingham, Esq.	Messrs. Holmes, Loftus and Young, 10, New-inn.
Messrs. Samuel and John Cooper, of Henley-on-Thames	Charles Berkeley, 52, Lincoln's-inn-fields.
Henry Moosing Alridge, of Poole, Esq.	Messrs. Skilbeck and Hall, 19, Southampton-buildings.
Thomas Brown, of Uppingham, Esq.	Thomas Bennett, 23, Hunter-street, Renswick-square.
Robert Fisher, jun., of Newport, Esq., (A. U. J. J. Peale, of Shrewsbury, Esq.)	H. B. Jones, 22, Austin Friars.
John Nicholls, of South Petherton, Esq.	Messrs. W. and E. Dyne, 61, Lincoln's-inn-fields.
William Henry Newman, of Southampton, Esq.	William Braikenridge, 16, Bartlett's-buildings, Holborn.
Messrs. Keen and Hand, of Stafford	Messrs. White, Eyre and White, 11, Bedford-row.
James Sparke, of Bury St. Edmunds, Esq., (A. U. Messrs. Jackson, Sparke, and Holmes, of Bury St. Edmunds)	T. H. Dixon, 5, New Boswell-court, Lincoln's-inn.
Charles Thelwall Abbott, of New-inn, Esq.	Messrs. Abbott, Jenkins and Abbott, New-inn.
William Henry Palmer, of 24, Bedford-row, Esq.	Messrs. Palmer, France and Palmer, 24, Bedford-row.
Thomas Heath, of Warwick, Esq.	Messrs. Taylor and Collinson, 28, Great James-street, Bedford-row.
John Heelis, of Appleby, Esq.	George Mounsey Gray, 9, Staple-inn.
Gabriel Goldney, of Chippenham, Esq.	William Lewis, 6, Raymond-buildings, Gray's-inn.
Robert Gilham, of Worcester, Esq.	Messrs. White, Eyre and White, 11, Bedford-row.
Frederick Thomas Elgie, of Worcester, Esq.	Messrs. Clarke, Gray, and Woodcock, 20, Lincoln's-inn-fields.
William Gray, of York, Esq.	Messrs. Bell, Broderick and Bell, 9, Bow-church-yard.
Henry Newton, of York, Esq.	Messrs. Pringle and Co. 3, King's-road, Bedford-row.

NORTH WALES.

Thomas Owen, of Langfin, Esq.	Messrs. Abbott, Jenkins and Abbott, New-inn.
Messrs. Williams and Lloyd, of Pwllheli	Messrs. Williams and M'Leod, Paper-Buildings, Temple.
John James, of Wrexham, Esq.	Messrs. W. Reimond and Tagart, 47, Lincoln's-inn-fields.
Arthur Troughton Roberts, of Mold, Esq.	Messrs. Milne, Parry, Milne, and Morris, Hancock-buildings, Temple.
Isaac Gilbertson, of Bala, Esq.	Messrs. Holmes, Loftus and Young, 10, New-inn.
Joseph Crane Griffiths, of Welchpool, Esq.	John Symons, 33, Old Jewry.

SOUTH WALES.

David Thomas, (Messrs. D. Thomas and Beale,) of Brecon, Esq.	Henry Hammond, 16, Furnival's-inn.
William Griffith George, of Cardigan, Esq.	Messrs. Clayton and Cookson, New-square, Lincoln's-inn.
William Jones, of Spilman-street, Carmarthen, Esq.	Messrs. Poule and Gwylan, 3, Gray's-inn-square.
Charles Bishop, of Llandovery, Esq.	Messrs. Gregory and Sons, 12, Clement's-inn.
Edward George Smith, of Merthyr Tydfil, Esq.	Messrs. Abbott, Jenkins and Abbott, 8, New-inn.
Thomas Gwynne, of Haverfordwest, Esq.	Messrs. Holmes, Loftus, and Young, 10, New-inn.
William Lock, of Tenby, Esq.	Messrs. Norris, Allen, and Simpson, 20, Bedford-row.
Richard Green, of Knighton, Esq.	Messrs. Richardson and Talbot, 47, Bedford-row.

in March, 1841, gave the interest on all his monies invested in the Hand-in-Hand Loan Society, and also in all other societies, to his wife for life, and directed that immediately after his death all the securities for money, &c. should be called in, and then bequeathed all the monies belonging to him in Friendly Societies, and in all other societies when received, to his wife for her own use and benefit. The Vice-Chancellor of England having held that

the widow took the monies to arise from the loan societies as well as the friendly societies, absolutely, this appeal was presented.

Malins and *Hetherington*, in support of the appeal, which was opposed by *Stuart* and *Baggeley*.

The *Lord Chancellor* said, that the testator clearly intended a distinction to be made between the interest on the monies arising from the loan societies and that from the friendly

societies, and that the words "and in all other societies" after friendly societies, meant *system generis*. The decree of the Court below would therefore be varied accordingly.

Feb. 20, 23.—*Shrewsbury and Birmingham Railway Company v. North-Western Railway Company*—Appeal from Vice-Chancellor of England allowed.

—23.—*In re St. George Steam Packet Company*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

—23.—*Ex parte Wright, in re Vale of Neath Brewery Company*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

—25.—*Attorney-General v. Pilgrim*—Appeal from Master of the Rolls dismissed with costs.

—25.—*Shepherd v. Shepherd*—Appeal from Vice-Chancellor of England dismissed with costs.

—25, 26.—*Coleman v. Mellersh*—Part heard.

—26.—*In re Gaffer's Trust*—Appeal from Vice-Chancellor Wigram allowed.

Master of the Rolls.

Blenkinsopp v. Blenkinsopp, and others. Nov. 14, 16, 17, 19, 20, 21, 22, 23, 1849, Feb. 2, 1850.

FRAUDULENT DEED.—BONA FIDE CREDITORS.—JURISDICTION.

A deed was set aside for fraud, except so far as related to bond fide creditors, where it was executed for the purpose of avoiding the process of the Judicial Committee of the Privy Council, who had confirmed a decree of an Ecclesiastical Court for a divorce.

This bill was filed by Mrs. Harriet Leaton Blenkinsopp by her next friend, against Mr. George Thomas Leaton Blenkinsopp, her husband, Thomas William Fenwick, William Trotter and others, to set aside a deed, dated 9 Sept. 1842, as being fraudulent and void. The plaintiff had obtained, in 1841, a divorce from the Durham Consistorial Court against her husband for cruelty and adultery, which decree was afterwards confirmed on appeal, by the Judicial Committee of the Privy Council, together with alimony, amounting to 160*l.* per annum, which had been allotted by the Surrogate. It was then alleged that the defendant Blenkinsopp, in order to evade the process of the Privy Council, executed a deed, dated 9 Sept. 1842, whereby he conveyed to the defendants, Fenwick and Trotter, all his lands, &c. situate in Northumberland, upon certain trusts, for the creditors named in the deed, and also to pay an annuity to himself and three sons for life, and to his wife, if she desisted from the proceedings in the Ecclesiastical Court. Blenkinsopp then went to reside within the precincts of Holyrood House, in Scotland, in order to avoid service of all process, &c.

Order and *Glasgow* for the plaintiff, *Walpole* and *Dickinson* for defendants, Blenkinsopp, *Walpole* for defendants, Fenwick and Trotter.

The Master of the Rolls said, the deed was fraudulently executed, to defeat the plaintiff's right against the defendant's property, and in the Privy Council had no power to set it aside, this Court would interfere. It could not, however, be set aside as regarded the bond fide creditors, and therefore the defendants, Fenwick and Trotter, would be declared trustees for the plaintiff so far as related to the moneys due, or hereafter to become due to her, subject to such bond fide debts only, of which there must be a reference for an account. The bill would be dismissed against the bond fide creditors, with costs, which the plaintiff might recover from the defendant Blenkinsopp.

Feb. 21.—*Allen v. London and North-Western Railway Company*—Order for summoning jury to assess compensation under 8 Vict. c. 18.

—21.—*Ord and others v. Parkyn and others*—Injunction continued until March 9.

—23.—*Hodgson v. E. Pons and others*—Injunction granted to restrain the defendants from applying funds of railway company otherwise than towards completing whole line of railway, but refused as to enforcing payment of calls.

—25, 26.—*Thorner v. Sheard, and others*—Part heard.

Vice-Chancellor of England.

Stevens and another v. Wicks. Feb. 1, 1850.

COPYRIGHT.—INFRINGEMENT.—ENTERING AT STATIONERS' HALL.

An injunction was granted to restrain the publication of a work, several portions of which were verbatim copies from the plaintiffs' book, and other parts only considerable alterations, although there were other portions of original matter.

Remble, the registering of a book under the 15 of 6 Vict. c. 45, at Stationers' Hall, is insufficient to enable the parties in a libel joint judgment intended to sue for an infringement of copyright.

There was a motion for an injunction to restrain the defendant, a law bookseller, from selling or disposing of copies of an edition of the Joint-Stock Companies' Winding-up Act, by Edward Bournes Lovell. It appeared that the plaintiffs, in December 1848, published an edition of the Winding-up Act, 1848, with an introduction and notes; and subsequently a supplemental volume containing the Amendment Act, 1849, edited by Mr. John Malins Lindlow, which was duly registered at Stationers' Hall by the plaintiffs, as proprietors; and that the defendants' book, containing many passages word for word, and other parts were considerable alterations, into the Act of 1848, and the 1849 Amendment Act, in support of the motion. *Rolls* and *Glasgow* granted an injunction, and made the 15 of 6 Vict. c. 45, insufficient, without its usual registration, to give the plaintiffs a joint right to sue. *Barnes* and *Halcomb*, 3 Myl. & Cr. 737.

THIS was a suit against the trustees of a deed executed by the last tenant in tail of a messuage and premises at Kensington to set it aside on the ground that it was not registered under the stat. 7 Anne, c. 20, and therefore void as against a settlement executed without notice thereof on the marriage of the plaintiff and his wife, and for the delivery up of the lease of the premises in order that proceedings might be taken at law against the tenant.

The *Solicitor-General* and *Jolliffe* for the plaintiffs; *Cox* for an infant defendant who was tenant in tail under the unregistered deed; *Wood* and *Berkeley* for the trustees, contra.

The *Vice-Chancellor* said, that as the plaintiffs were out of possession, they must first establish their right at law, and directed that they should have the use of the deed—the case in the meantime to stand over.

Feb. 20.—*Monro v. Taylor*—Order for payment of plaintiff's costs in suit for specific performance.

— 20.—*Boreham v. Bignall*—Judgment on construction of will.

— 20.—*Elsay v. Lutyens*—Judgment as to costs.

— 21, 22, 23.—*Newman v. Hutton*—*Cur. ad. vult.*

— 23.—*Evelys v. Lewis*—Receiver discharged by consent, on terms.

— 25.—*Brogden v. Eastern Counties Railway Company*—Motion for production of documents to stand over, to give defendants opportunity to file affidavit as to any circumstances which might privilege them.

— 26.—*Forsyth v. Ellise*—*Cur. ad. vult.*

— 26.—*Nicholls v. Ward*—Affidavit refused to be received, sworn before Master Extraordinary in Chancery, in Isle of Man.

Queen's Bench.

Dec d. Lord Arundel v. Fowler. Feb. 1, 1850.

CERTIFICATE OF BURIAL.—PRODUCTION FROM PROPER CUSTODY.—NEW TRIAL.—REJECTION OF EVIDENCE.

On motion for a new trial, held, that a certificate of burial was not shown to be produced from the proper legal custody where the witness who produced it stated he went to K., and upon inquiring for the house of the parish clerk, he saw, at a house to which he was directed, a man who said he was the parish clerk, and who produced a book in answer to a request for the certificate of burial of H. B., and the witness copied the same from such book.

Crowder, Q. C., showed cause against a rule for a new trial, on the ground of the improper rejection of a certificate of burial of Henry Blandford, given in evidence at the trial of an action of ejectment. The certificate was produced by a witness who said that he went to Kingston-upon-Thames, and upon inquiring the residence of the parish clerk, was directed to a house where he found a man who said he was the parish clerk, and who produced a book

from which the witness copied the certificate.

Greenwood, Q. C., in support.

The Court held, that the certificate was not shown to have come out of the proper legal custody, and therefore discharged the rule.

Job v. Hudson. Jan 31, 1850.

RE-OPENING RULE FOR NEW TRIAL.—NON-ATTENDANCE OF ATTORNEY.—COSTS.

A rule was made absolute to re-open a rule for a new trial, which had been discharged on the ground of the non-attendance of the plaintiff in support, upon payment, however, of the costs by the plaintiff's attorney.

On behalf of the plaintiff in an action against an attorney for negligence, a rule nisi had been obtained to re-open a rule for a new trial, and which had been discharged upon the plaintiff not appearing in support. The plaintiff's attorney stated in his affidavit, that he had delivered briefs to counsel long before the day appointed to show cause, but it appeared that some fees were due to two of the counsel.

Wilkins, S. L., and *Huddleston*, showed cause against the rule, which was supported by *Humfrey, Q. C.*, who stated that the attorney supposed the rule would not be taken in the absence of Lord Denman, who tried the cause.

The Court said, that under these circumstances the rule would be absolute to re-open the rule for the sake of the plaintiff, but it would be at the expense of the plaintiff's attorney, whose duty it was to have been in Court when the rule came on.

Feb. 26.—*Wolton v. Gavin*—Rule nisi for new trial.

— 26.—*Regina v. Hardy*—Rule discharged without costs for attachment for contempt.

— 26.—*Markwell v. Dyson*—Rule for attachment for contempt, discharged without costs.

— 26.—*Chapman v. Speller*—Rule absolute for new trial.

— 26.—*D. of Rutland v. Bagehawe*—Order for a replender.

— 26.—*Houlden v. Smith*—Judgment for plaintiff.

— 26.—*Bunter and another v. Creswell*—Rule discharged without costs.

— 28.—*Thompson v. Ingham*—Judgment for plaintiff.

— 18.—*Regina v. Inhabitants of Camberwell*—Assessment ordered to be restored to £80l.

Common Pleas.

Es parte T. D. Keighley. Feb 25, 1850.

COUNTY COURT.—ATTORNEYS' FEES.

The 91st section of the 9 & 10 Vict. c. 95, does not prevent an attorney from recovering from his client a reasonable sum for work and labour done by him as such attorney, preparatory to the institution of a suit in the County Court.

The goods of one Goodman having been wrongfully seized for alleged arrears of rent, he instructed Mr. Keighley, his attorney, to

take proceedings against the distrainor. Inquiries were instituted, and ultimately, after considerable expense had been incurred, it was determined that a plaint in tort should be levied in the County Court at Edmonton. A summons was accordingly taken out, and at the trial Mr. Keighley appeared and acted as the attorney of the complainant, when the judge awarded him 19l. 19s., being 12l. 10s. for the amount of rent improperly distrained for, and 7l. 9s. for the costs incurred by the plaintiff prior to the levying of the plaint, and also 6l. 3s. 4d. for the costs of the proceedings in the County Court. Mr. Keighley afterwards sent his client, Goodman, a bill of costs, amounting to 20l. 19s. 2d., which included a great portion of the 7l. 9s. allowed to the plaintiff in the County Court by way of damages, and the whole of the 6l. 3s. 4d. The Master to whom this bill was referred for taxation, however, declined to allow any part of it, assigning his reason in a certificate of which the following is a copy:—

"I certify that I have disallowed the whole of the bill of 20l. 19s. 2d., mentioned in this order, because I consider that the act of 9 & 10 Vict. c. 95, s. 91, limits the remuneration of the attorney to 15s."

J. Brown, in Trinity Term last, obtained a rule to shew cause why the Master should not tax the bill. He submitted that the Master had evidently misapprehended the true effect of the 91st section; and that it was obvious

' That section enacts "that no person shall be entitled to appear for any other party to any proceeding in any of the said [County] Courts, unless he be an attorney of one of her Majesty's Superior Courts of Record, or a barrister-at-law instructed by such attorney on behalf of the party, or, by leave of the judge, any other person allowed by the judge to appear instead of the party; but no barrister, attorney, or other person, except by leave of the judge, shall be entitled to be heard to argue any question as counsel for any other person in any proceeding in any Court holden under this act; and no person, not being an attorney admitted to one of her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court; and no attorney shall be entitled to have or recover therefore any sum of money, unless the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5l., or more than 15s. in any case within the summary jurisdiction given by this act; and in no case shall any fee exceeding 14. 3s. 6d. be allowed for employing a barrister as counsel in the cause; and the expense of employing a barrister or an attorney, either by plaintiff or defendant, shall not be allowed on taxation of costs, in the case of a plaintiff, where less than 5l. is recovered, or, in the case of a defendant, where less than

from the scale of fees appended to the act, that the sums mentioned in the 91st section were not intended to include all that the attorney was to receive, but was merely the fee he was to be allowed for attending in Court, and there advocating the cause of his client. [Wilde, C. J. Are not these regulations intended to apply only as between party and party?] The Court of Queen's Bench has, in a recent case, intimated a different, though, it is submitted, not a very satisfactory opinion: *Ex parte Clipperton, in re Green*.¹ [Maule, J. It certainly is not incident to a Court to tax costs as between attorney and client. Wilde, C. J. The point is one of very general interest, and by no means free from doubt. You may take a rule.]

Byles, Serjt., on a subsequent day in the same term, shewed cause. The 91st section of the statute in terms limits the attorney's remuneration for business done in the County Court to 10s. where the sum recovered exceeds 40s. and does not exceed 5l., and to 15s. where the sum recovered exceeds 5l. [Maule, J. Plus the expenses out of pocket?] Plus the necessary disbursements made in the suit. The case of *Ex parte Green*, which was referred to on the motion, has expressly decided that the 91st section applies to costs as between attorney and client, and includes everything that is done by the attorney in regard to a suit in the County Court, whether before, or at, or after the hearing. Patteson, J., there says: "The words of the section are very clear, that 'no attorney shall be entitled to have or recover therefore' (that is, for appearing or acting on behalf of any other person in the County Court,) more than the sums specified, which have been allowed by the Master. We are of opinion that the legislature did not intend to make any distinction between an attorney's right to recover from the opposite party, and from his own client. We think that the costs intended to be allowed between party and party, in regard to the attorneys, are all such costs as such attorneys are entitled to receive from their clients; and that the latter part of the section, which requires the order of a judge for the allowance of such costs as between party and party, was meant as a further check against the unnecessary employment of attorneys, but does not limit and control the proceeding part of the clause. We are further of opinion, that the words 'acting for any other person in the County Court' includes everything that is done by the attorney in regard to a suit in that Court, whether before, or at, or after the hearing. [Wilde, C. J. I must own I should have thought that the clause had no reference whatever to costs as between attorney and client. The framer of the clause seems to assume that

5l. is claimed, or in any case, unless by order of the judge."

¹ 12 Jurist, 1044.

² The judges present at the argument were, Lord Denman, Patteson, J., Wightman, J., and Erie, J.

the attorney is employed, like the barrister, at the hearing only.] Costs between party and party can only be costs incurred in the Court. The Court of Queen's Bench has expressly decided that there is no difference between costs between party and party and costs as between attorney and client, in this respect. [Wilde, C. J. The effect of that construction of the act will be to drive the editors into the hands of a class of persons who are certainly not the best calculated to promote their interest.]

Brown was not called upon to support his rule.

Wilde, C. J. Considering that the point is one of novelty and importance, and that the only reports of what passed in the Court of Queen's Bench in the case cited, are somewhat loose, we will take time to ascertain what that Court really did mean to decide.

Cur. adv. vult.

Maule, J., delivered the opinion of the Court. This was a motion to review the taxation of an attorney's bill. The Master had disallowed certain items for business done in conducting preliminary inquiries before commencing a suit in one of the County Courts established under the act of 9 & 10 Vict. c. 95. The ground of the disallowance was, that the 91st section of that act prevented the attorney from having or recovering for the services in question any larger sum than 15s. And this construction of the act appears to have been adopted by the Court of Queen's Bench in the case of *Ex parte Green*.

Having heard the cases argued on this point, and having taken time to consider it, we find ourselves compelled to adopt a different construction of the section in question. The section begins by providing, that no person but an attorney, or a barrister instructed by one, or a person allowed by the judge to appear instead of such party, shall be entitled to appear in a County Court for any other party; and such person is, by the next clause, restricted from being entitled to be heard to argue a question as counsel, without leave of the judge. This is followed by a clause in the following words:—"and no person not being an attorney admitted to one of her Majesty's Superior Courts of Record, shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court; and no attorney shall be entitled to have or recover *therefore* any sum of money, unless the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5l., or more than 15s. in any case within the summary jurisdiction given by this act." The section then goes on to provide that no fee exceeding 1l. 3s. 6d. shall be allowed for employing a barrister "as counsel in the cause," and that the expense of employing a barrister or attorney shall not be allowed on taxation of costs,

unless as it may be recovered in the order of the judge.

The first clause, limiting the definition of persons who may be allowed to appear in the Courts for another party, and indeed a party, seems very clearly to apply only to the appearance in the Court as a representative of a party who would otherwise be obliged to appear for himself. The next provision, granting the right to be heard to argue in Court, also evidently applies only to a proceeding in Court: the clause in question begins with the provision "and no person not being an attorney admitted, &c. shall be entitled to have or recover any sum of money for appearing or acting on behalf of any other person in the said Court." These words, certainly in their literal construction, apply only to what is done in the Court; and this is not only the literal sense, but the natural and obvious sense of the words; and the subject of the preceding part of the section being matters in Court only, confirms this construction. Indeed, it would be difficult by affirmative words more expressly to confine the enactment to what is done in Court, than by those actually used as appearing or acting on behalf of any other person in the said Court. The words now following, on which the present question immediately arises, are—"and no attorney shall be entitled to have or recover *therefore* any sum of money, unless the debt or damage claimed shall be more than 40s., or to have or recover more than 10s. for his fees and costs, unless the debt or damage claimed shall be more than 5l., or more than 15s. in any case within the summary jurisdiction given by this act." Here, the word "*therefore*" clearly is intended to refer to the preceding words, "for appearing or acting on behalf of any other person in the said Court." It is the right to have or recover anything in cases not above 40s., is also taken away only in respect of the appearing or acting in Court on behalf of the party to the suit. It is true that the word "*therefore*" is not repeated in the provision as to cases where 10s. or 15s. may be had or recovered, the words being "or to have or recover more than 10s. for his fees and costs," without saying *therefore*. But it appears to us that this provision is to be considered as applying to fees and costs for appearing and acting on behalf of any other person in the said Court. If this were not so, it would follow, that, in cases not exceeding 40s., an attorney might recover for what was done out of Court, but not in cases exceeding that amount. Indeed, the Court of Queen's Bench, as reported in the Jurist, seem to have considered that the restriction of fees to 10s. and 15s., as well as the preceding one which deprives the attorney of any claim in cases not exceeding 40s., should be understood of fees "for appearing and acting in Court on behalf of another," and expressed that opinion in the commencement of their judgment; observing that the words of the statute are very clear, that no attorney shall be entitled to have or re-

cover therefore, (that is, for appearing or acting on behalf of any other person in the County Court) more than the sums there specified."

It appears, therefore, on considering the words of the enactment, taking the language of the legislature in its ordinary sense, that the restriction in question does not apply to business done out of Court, before the suit is commenced; and we think, that, looking at the general scope of the enactment, we ought to come to a similar conclusion. The subject of the section is proceedings in the County Court, a very fit subject of regulation in an act of parliament for establishing County Courts. The act certainly contemplates that the hearing of cases in the County Courts will usually be short and summary. The limitation of fees for acting for a party at such a hearing, is a natural incident to such Courts; and such limitations are not unusual, in respect of proceedings in Courts. But, when one man employs another to do work and labour for him, for a reasonable remuneration, it seems unreasonable to say the contract shall not be binding, if the employment end in a County Court, but will be binding, if it do not. We think such a restriction as this would be on the liberty of entering into such contracts as the parties think fit, ought not to be implied, unless by a necessary implication; and there is none such here.

The Court of Queen's Bench are reported to have said in *Ex parte Green*, that the legislature did not intend to make any distinction between an attorney's right to recover from the opposite party, and from his own client. But we think there is no reason for construing the act as abolishing the existing distinction between those costs which may be allowed between party and party, and the remuneration which an attorney may recover from his client. The framers of the act use appropriate words in speaking of both kinds of claim,—the attorney's against his client being described as "a right to have or recover," while costs between party and party are described as "costs allowed on taxation."

On the whole, we think there is nothing in this section to take away the right of an attorney to be paid a reasonable amount for work done out of Court, before the institution of a suit, or to take away the right of the Superior Courts, which alone have jurisdiction to tax attorneys' bills, to allow a reasonable remuneration for this description of labour. The rule must therefore be made absolute. Rule absolute.

Feb. 25.—*Crowl v. Edge*—Rule for new trial discharged.

— 25.—*Barnwell, P. O., v. Sutherland*—Rule absolute to set aside verdict, and for new trial.

— 25.—*Philpotts and another v. Pickford*—On demurrer to plea, judgment for plaintiff, with leave to amend on usual terms.

— 25.—*Barnes v. Ward*—Rule discharged for new trial.

— 25.—*Wheeler v. Miller*—Rule, for new trial discharged.

Feb. 25.—*Outlaw, Hills, and Arrangement entered into.*

— 25.—*Phillips v. Lewis*—Rule discharged—held that amendments could not be allowed to a writ in order to save the Statute of Limitations, changing the form of the action from assumpsit to debt.

Court of Exchequer.

Edwards v. Rogers. Jan. 26, 1850.

CERTIORARI OR PROHIBITION.—SECOND PLAINT FOR SAME CAUSE OF ACTION, AS HAD BEEN REMOVED BY CERTIORARI.

A rule nisi for a certiorari, to remove a plaintiff in a County Court for 5*l.* damages or for a prohibition to the judge thereof from proceeding in the plaintiff which was entered for the same cause of action as a former one which had been removed by certiorari into this Court, was discharged on the ground that the writ was taken away for all plaintiffs under 5*l.*

A RULE nisi had been obtained on January 12, for a prohibition to the judge of the County Court of Montgomeryshire, ex. for a certiorari. It appeared that a plaintiff had been entered for the recovery of 20*l.* for certain injuries alleged to be caused to the plaintiff's crops by noxious gases from the defendant's collieries, which plaintiff had been removed by certiorari into this Court. The plaintiff, however, entered another plaintiff for the same cause of action for 5*l.*

Hale and Unthank showed cause against the rule before Rolfe, B., sitting alone in the adjoining Court; *Regley* in support.

The Court, after taking time to consider, said, that as the writ of certiorari was taken away in all plaintiffs under 5*l.*, a prohibition could not be issued to prevent the judge of the County Court from proceeding in a plaintiff which could not be removed into a Superior Court; and the rule was therefore discharged.

Feb. 25.—*Doe d. Jones v. Jones*—Rule absolute to enter verdict for defendant.

— 25.—*Birkenhead, Lancashire and Cheshire Junction Railway Company v. Pilcher*—Rule discharged for new trial.

— 25.—*Chaplin v. Milvain*—Rule absolute to enter verdict for defendant.

Court of Exchequer Chamber.

Gosling v. Foley and another. Jan. 22, 1850.

CHURCH-WARD MADE BY MINORITY OF VESTRY.—VALIDITY OF.

An error from the Court of Queen's Bench, held, (per Platt, B., Cresswell and Maule, JJ., Alderson, B., dissentientibus Rolfe and Parke, B.B., and Wilde, L.C.J.,) that where the majority of a vestry held in obedience to a motion from the Ecclesiastical Court to make a rate for the repair of the parish church, had refused to make the same, and the minority had afterwards carried a rate of 2*s.* in the pound in

their absence, such rate was valid, and that the appellant as a parishioner, although one of the majority, was liable to pay the same.

This was a writ of error on a judgment of the Court of Queen's Bench on a writ of prohibition to the judge of the Archdeacon Court from proceeding in a libel against a rate of 2s. in the pound, made in obedience to a monition from the Consistorial Court for the repair of the parish church of Braintree, in the county of Essex and diocese of London, and which rate had been subsequently confirmed by the vicar general. It appeared that the parish church having fallen into a state of dilapidation, the vicar cited the parishioners to appear before the Consistorial and Episcopal Court of the diocese, to show cause why a monition should not issue to summon a vestry for the purpose of making a rate, and that the defendants as churchwardens appeared and a monition issued. A vestry was accordingly held on 15th July, 1841, at which the monition was read, as well as a survey and estimate of the necessary repairs, and a rate proposed and seconded of 2s. in the pound. An amendment was however put and carried refusing to make the rate, and afterwards the majority of the parishioners left. The defendants thereupon, and others of the rate-payers and parishioners, in obedience to the monition, carried the original resolution without opposition.

M. D. Hill for the appellant; *Sir F. Theobald* for the respondents.

Cur. ad. vult.

The Court now delivered their judgments *seriatim*. *Platt, B.*, after referring to the proceedings, said the questions raised were,—1st, whether the plaintiff, as a parishioner, was liable to be rated for the repair of the church; and 2ndly, whether the rate had been properly made. Opportunity had been afforded the parishioners in the Ecclesiastical Court of showing the church did not require repair, but that not being shown, the monition had issued, and the plaintiff was liable to be rated, (*Veley v. Burder*, 12 A. & E. 301); and the majority having refused to take part in the proceedings for making a rate in obedience to injunctions of a Court of competent jurisdiction, the churchwardens and those of the rate-payers who were ready to perform their duty had properly made the rate.

Cresswell, J., concurred. This was similar to the case of a corporation meeting to elect officers, and where, if the majority refused to join in the proceedings, the minority might elect: *Oldknow v. Wamwright*, 2 Burr. 1017. It was laid down by *Sir Simon Dugge* in the *Parson's Counsellor*, pt. 1, c. 12, p. 137, and by *Lord Stowell* in *Lord Maynard v. Brand*, 3 Phillim. 501, that if the parishioners refused to meet or assent to a rate the churchwardens might proceed alone, and the parishioners rendered themselves liable to be excommunicated: *Rogers v. Davenant*, 1 Mod. 194. There was no express authority against the power to make the rate, and the

balance of authority seemed to be in favour of that power.

Mauk, J., and *Alderson, B.*, concurred.

Rolfe, B. The minority had not the power to bind the majority, the voting of a church-rate being in the nature of a bye-law, (*Year-Book*, 44 Edward 3, fo. 18, p. 13); and the majority, by refusing to take part in the proceedings, had not thrown their votes away as in the case of an election, but only rendered themselves liable to be punished as contumacious: *Rogers v. Davenant*, 1 Mod. 194; *Lyndwood*, p. 53 n., 1 Gibson's Codex, p. 196; and the judgment of the Court below should be reversed.

Parke, B., and *Wilde, L. C. J.*, were also of the same opinion; but the majority of the learned judges having given a contrary opinion, the judgment was affirmed.

Court of Bankruptcy.

(Coram Mr. Commissioner Evans.)

In re Dunn. Feb. 22, 1850.

BANKRUPT LAW CONSOLIDATION ACT.—ARRANGEMENTS UNDER CONTROL OF THE COURT—NEGLECTING TO FILE ACCOUNTS.

Where a petitioner under the arrangement clauses, omitted to file accounts, ten days before the day appointed for the private sitting, and had not previously applied for an extension of time: Held, that it was imperative on the commissioner to dismiss the petition.

A PETITION for protection and arrangement was presented under the 211th sect. of the 12 & 13 Vict. c. 106, and a day named for a private sitting pursuant to sect. 213, but the petitioner had not ten days before the day appointed for the private sitting, filed an account of his debts and estate as required by sect. 214; nor had he obtained any order extending the time for filing such accounts. These facts having been brought before the commissioner by affidavit, and his attention directed to the language of the 223rd sect., which provides "that if such petitioning creditor shall not duly attend the sittings of the Court, or if he shall not file his account in manner aforesaid, within such extended time as may be allowed for that purpose," &c. &c., "such petition shall be dismissed;" and the commissioner was called upon under this section to dismiss the petition.

It was contended *contra*, that, the 223rd sect. only applied to cases where the time for filing accounts had been extended, and that the Court might at any time, in the exercise of its discretion, allow further time for filing the accounts.

The Commissioner. I have no doubt on this point. My duty is clearly pointed out by the act of parliament. The petition must be dismissed.

The petition was therefore dismissed, and the petitioner was afterwards made bankrupt under the 76th sect. of the Bankruptcy Law Consolidation Act, 1849.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

SATURDAY, MARCH 9, 1850.

THE LORD CHIEF JUSTICE OF THE QUEEN'S BENCH.

LORD DENMAN resigned the office of Lord Chief Justice on Saturday last, and has been succeeded by Lord Campbell. The profession and the public were fully prepared for both events. It has been for some time well known, that when Sir John Jervis was offered the office of Attorney-General, he was informed that upon the occurrence of a vacancy in the chiefship of the Court of Queen's Bench, Lord Campbell was considered to have paramount claims upon the consideration of the government, so that the deviation from the ordinary course of promotion in this instance has created neither disappointment nor surprise.

The state of Lord Denman's health for some months past has rendered his return to the arduous duties of his office, a question of anxious solicitude to his family and friends. He retires with the best reward of a magistrate—the respect and esteem of his contemporaries—and it is to be hoped may live for several years in the enjoyment of that domestic tranquillity which would seem to be the appropriate supplement to an honourable and active public career.

Some misapprehension exists as to the emoluments to which the Lord Chief Justice is entitled, whilst executing the duties of the office, and also as to the amount of the annuity which may be granted to a retired Chief Justice; we may therefore be excused if we endeavour to set at rest the contradictory statements current in professional circles upon both points. The salary of the Lord Chief Justice of the Queen's Bench, was fixed by the statute 6 Geo. 4, c. 82, which is entitled "An Act to abolish the Sale of offices in the Court of King's Bench in England, to make provision for

the Lord Chief Justice of the said Court, and to grant an additional annuity to the said Lord Chief Justice on resignation of his office." After declaring that certain offices connected with the Court of King's Bench, after they become vacant, are to be no longer saleable, and regulating the future appointments to such offices, this act provides for the future salary of the Lord Chief Justice, by sect. 10, which reciting "that it will be necessary to make due provision for the maintenance of the honour and dignity of the office of Lord Chief Justice of the said Court, in lieu of the valuable patronage hitherto enjoyed by the person from time to time filling the said office, and which will be taken away by this act; and it is expedient that the Lord Chief Justice of the said Court should receive a salary to be fixed by parliament in lieu of all pecuniary fees and emoluments now received by him;" proceeds to enact:—"That the annual salary of the Lord Chief Justice of the said Court for the time being, shall be the sum of *ten thousand pounds*, to be computed and commence, in the case of the present Lord Chief Justice, from the beginning of the quarter current at the time of the passing of this act, and to commence and be computed in the case of every future Lord Chief Justice, from the death or resignation of his immediate predecessor," &c. the said sum of 10,000*l.* to be in lieu of all fees and pecuniary profits belonging to the office, payable quarterly, with a rateable proportion of the quarter current at the time of death or resignation.

Although this act was in force when Lord Denman took office, and he was undoubtedly entitled to the salary specified in the act, in pursuance of some private arrangement then entered into, his lordship, it seems, has only drawn the sum of 8,000*l.* per annum, which is the amount of salary

to which the Chief Justice of the Common Pleas is entitled under the 6 Geo. 4, c. 83, s. 8. Lord Denman took his seat as Chief Justice of the Court of Queen's Bench on the 8th of Nov. 1832,¹ so that by his relinquishment of one-fifth part of the emoluments annexed to his office, a sum of somewhat more than 34,000*l.* has been saved to the public; but however desirable it may be to see the principle of economy carried out as regards the salaries of public officers, it is not safe and can scarcely be considered constitutional, when the legislature has declared that the salary of the Lord Chief Justice shall be 10,000*l.*, and that such sum is necessary for the maintenance of the honour and dignity of the office, that the duties of the office should be undertaken at a lesser salary. We have, no doubt, in this as in every other transaction, the late Lord Chief Justice was influenced by the highest and purest motives; but we make bold to say the precedent is objectionable, and ought not to be followed: it would not be seemly or advantageous to the public to find a competition—even though it should be limited to those eminently qualified to fill the office—for executing the duties of Lord Chief Justice of England at a low salary! If the sum fixed by act of parliament in 1825 be too high, let it be reduced by all means, but until this be done by the proper authority, let the possessor have neither more nor less than the law allows.

The retiring pension of a Lord Chief Justice of the Queen's Bench, is regulated by three several statutes, and is now limited to the sum of 4,000*l.* per annum; and this annuity is only grantable when the Lord Chief Justice who resigns has filled the office of judge for fifteen years, or is permanently disabled from executing the duties of the office. The earliest statute now in force on the subject is the act 39 Geo. 3, c. 110, s. 7, which provides, "That it shall and may be lawful for his majesty by letters patent, &c., to grant unto any person, who may or shall have executed the office of Chief Justice of the Court of King's Bench, and shall have resigned the same, an annuity or yearly sum of money, not exceeding the sum of *three thousand pounds*;" and the same section further enacts:—"That no such annuity or yearly sum of money, granted to any person having exe-

cuted the office of Chief Justice, shall be valid, unless such Chief Justice shall have continued in office fifteen years or be afflicted with permanent infirmity, disabling him from the due execution of his office." This act was followed by the 53 Geo. 3, c. 153, to enable the Crown to grant additional salaries to the judges on resignation, and it enacts:—"That it shall be lawful for his Majesty by letters patent, to grant unto any person who shall have executed the office of Chief Justice of the Court of King's Bench, and who shall have resigned the same, an annuity or yearly sum of *eight hundred pounds*, in addition to and in augmentation of the annuity allowed to be granted under the provisions of the 39 Geo. 3." This was followed by the act of the 6th Geo. 4, c. 82, already referred to, which, by section 11, provides:—"That it shall be lawful for his Majesty by letters patent, to grant to any person who may have executed the office of Chief Justice of the Court of King's Bench, an annuity or yearly sum of money not exceeding the sum of *two hundred pounds*, and the said annuity shall be in addition to and in augmentation of the respective annuities or yearly sums allowed to be granted to such Chief Justice, under the acts 39 G. 3, c. 110, and 53 G. 3, c. 153." The retiring annuity of 4,000*l.* is therefore compounded of the three several sums of 3,000*l.*, 800*l.*, and 200*l.*, under these acts of parliament, and the aggregate sum of 4,000*l.* is the maximum amount to which the Lord Chief Justice is entitled, after the most protracted servitude.

The Attorney-General on the part of the Bar, has transmitted the following justly-deserved and well-expressed address to Lord Denman on his retirement from the Bench:—

" Temple, March 1, 1850.

"My Lord,—I should have desired in your Court, before the profession and the public, to give utterance to the regret of the Bar that illness compels your Lordship to resign the high office you have long filled with distinguished honour to yourself and with eminent advantage to your country.

"I may thus, however, be allowed to convey the expression of our feelings, and to assure your Lordship, that the learning, the impartiality, the high sense of honour, the firmness and dignity which marked and ennobled your administration of justice, have always commanded admiration and respect; while every practitioner in your Lordship's Court bears grateful testimony to the kindness and the courtesy that endeared you to us all.

"We are sensible that failing health and advancing years entitle your Lordship to lay aside the arduous duties of the Judge; but we pray

¹ The authorised Reports of the Court of King's Bench, after Lord Denman became Chief Justice, commence with the 4th volume of Barnwall and Adolphus. Upon Lord Denman's promotion, Mr. (now Lord) Campbell, was appointed Solicitor-General.

that you may be blessed with vigour to enjoy the leisure you have justly earned, and to devote to the public service the patriotism and the eloquence already so conspicuous in the annals of parliament.

"In the evening of an eventful life your Lordship will carry with you into retirement the affectionate sympathies of every member of the profession, and will reap some reward for your labours in the knowledge that you will long live in their memory an example to applaud and emulate.

"I have the honour to be, my Lord, with sentiments of sincere respect and affection, your Lordship's faithful servant,

"JAMES JENNERS."

"The Right Hon. Lord Denman, &c."

His Lordship's kind and characteristic reply was as follows:—

"38, Portland-place, March 1, 1860.

"Dear Mr. Attorney.—I received with the highest satisfaction your kind letter, expressing your own sentiments, and those of the Bar in general, on my retirement from office. If I have merited in any degree your valuable approbation, I am conscious that mainly it must be ascribed to the learning, liberality, and candour by which you and your brethren rendered the performance of my laborious duties during so many years both easy and delightful.

"Fully aware of my many deficiencies in other respects, I yet will not disclaim the praise of a constant and earnest endeavour to discover truth and promote justice; and it is my pride to feel that, with the assistance of my excellent colleagues, I have not failed in my anxious wish to maintain, and even elevate, the character of the English Bar. Among the many consolations which support me in taking this painful step, none will be more effectual than to witness the increasing prosperity and honour of the profession which you so worthily represent.

"With every feeling of esteem and respect towards yourself, I remain, my dear Mr. Attorney, your faithful and obedient servant,

"DENMAN."

ATTORNEYS' AND PROCTORS' ANNUAL CERTIFICATE TAX.

THE following revised statement in support of the repeal of the tax has been issued by the Incorporated Law Society:

"This tax was imposed in 1785, to make up an expected deficiency in the shop tax; the latter tax was afterwards repealed, and all the stamps on law proceedings were abolished in 1824, as "taxes on the administration of justice."

The certificate tax remained, and has been largely increased. At present, if the practitioner resides in London, Westminster, Edinburgh, or Dublin, he pays 12*l.* a year, and if, in any other part of the kingdom 8*l.*

The amount of this tax for the year ending 5th Jan. 1848, was 88,980*l.*¹

The stamp duty on articles of clerkship was increased in 1845 to 120*l.*, and that on the admission of attorneys to 25*l.*; so that no attorney or proctor can be admitted to practise without having first paid stamp duties amounting to 145*l.*, besides a premium. These duties, which amount to the annual sum of 68,886*l.*,² it is not proposed to disturb, and they will remain as an exclusive stamp tax on the profession of attorneys and proctors.

A few trades pay stamp taxes as a *licence* for exclusively exercising their trade; such as hawkers, medicine venders, pawnbrokers, and auctioneers: the aggregate amount of which taxes averages 93,884*l.*³ The tax on bankers for licences to re-issue notes, and on brewers, retailers of beer and spirits, and other excisable articles, is a fiscal tax, and of a totally different nature; and the repeal of the certificate tax by no means involves the alteration of the excise duties.

The attorneys and proctors will, *after the repeal of the certificate duty*, continue to pay an exclusive tax equal to three-fourths² of the taxes imposed on all other callings burdened with a personal tax. The pupils or apprentices in the medical profession, and in other professions and trades, pay only a stamp duty on their indentures, proportioned to the premium. The stamp duty on articles of clerkship would, in the same proportion, be 6*l.* only, instead of 120*l.*

Neither the Bar, nor any other profession than that of attorneys and proctors, is charged with annual taxes, except certificated conveyancers and notaries; but these two classes are exempt from the tax of 120*l.* on articles of clerkship.

The certificate tax is *partial, unequal, and not founded on any just principle of taxation.*

If a tax on the talent and industry of individuals engaged in any calling be at all expedient, it ought to be levied equally on the three learned professions, and on architects, engineers, merchants, bankers, brokers, manufacturers, accountants, and agents.

It is now an established principle that there should be no "*class legislation*;" that taxes should be general, and not imposed exclusively on the manufacturing, agricultural, or any other class,

¹ Table of revenues, Part XVII., sect. A., 1847, page 22, 35.

² Parl. Paper, 1845. No. 227. The admissions in 1849 were 866.

³ Parl. Paper, 1849, No. 624.

If, therefore, it be unjust to levy imposts on the community for the benefit of a class, it must be equally unjust to impose burdens on one class in exoneration of the public at large.

The attorneys and proctors pay at least their equal share of all the taxes imposed on the entire community. The certificate tax, which falls exclusively on them, operates as an *extraordinary income tax* on each individual residing in London, Edinburgh, or Dublin, equal to the ordinary income tax upon net gains of 410*l.* a year, and on each individual residing elsewhere, upon net gains of 275*l.* a year. This sum is levied without any reference to the actual amount of professional income, which in the case of nine-tenths of the profession is much less than those sums, and in addition to the ordinary income tax on actual net income. The gross amount of this extra tax paid by practitioners in the United Kingdom, if charged as the ordinary income tax, would assume their net annual gains to be *four millions*, a computation extravagantly beyond the actual amount.

By the operation of many recent acts, such as those relating to the equity, common law, bankruptcy, and County Courts, and to conveyancing, the emoluments of the profession have been very much diminished; and other measures are in contemplation, which, if passed, will diminish them to a still greater extent. If these measures are for the public good, the attorneys have no wish to complain of them; but they do insist on their right to be relieved from a tax levied exclusively on them, and paid out of profits which for the advantage of the public have been and may yet be further curtailed.

The great bulk of stamp duties on conveyances, deeds, probates, and administrations, is paid to the government through the medium of attorneys and proctors, who, till last year, were allowed a discount, averaging 46,000*l.* a year³ on such stamp duties, as some remuneration for the advance of the money. By an act of the last session this discount on all stamps above 10*l.* was taken off; and thus upwards of 40,000*l.* a year has been saved to the government at the expense of the attorneys and proctors.

The severe pressure of the certificate tax is strikingly shown by the inability of several hundred attorneys to pay it within the time fixed by the act. In 1848, no less than 399, and in 1849 no less than 596, did not pay it till the following year. It has been suggested that the tax operates to

secure the respectability of the profession. The contrary can be conclusively proved: in fact, it tends to increase the cases of malpractice, uncertificated persons being induced to carry on business in the names of others, in consequence of the pressure of the tax.

A great number of petitions, from various parts of the country, for the repeal of the tax have been presented to the House of Commons, and many more remain to be presented.

The justice of the case will not be met by a partial reduction of the tax.

The annual amount is . . . ¹ £68,980

Add amount paid by writers to the signet, attorneys and proctors in Scotland and Ireland ² £29,666

Total annual certificate duty £138,646

Deduct average annual amount allowed by the stamp office to attorneys and proctors till 1849, for discount on stamp duties 10*l.*, collected and paid by them ³ 40,000

Net amount of revenue to be abandoned £78,646

And the attorneys and proctors will still be liable to taxes, levied exclusively on them, which produce annually on an average, £68,886.²

[There are numerous towns from which no petitions have yet been presented. The preceding statement will supply materials for such petitions.—Ed.]

The following are the names, alphabetically arranged, of the members who presented petitions, and the places from which they were sent:—

Mr. *Adderley*, Uttoxeter; Burton-on-Trent.
Mr. *Aghenby*, Members of Society of Staple Inn.

Mr. *Chisholm Anstey*, Youghal.
Mr. *J. Bailey, jun.*, Hereford.
Mr. *Joseph Bailey*, Crickhowell.
Mr. *Baines*, Kingston-upon-Hull.
Mr. *Grewille Berkeley*, Cheltenham.
Mr. *Henry Berkeley*, Wootton-under-Edge; Thornbury.

Captain *Berkeley*, Gloucester.
Mr. *Blewitt*, Usk.

Captain *Boldero*, Chippenham.
Mr. *William Brown*, Ormskirk.

Mr. *Buck*, Great Torrington.

Mr. *Busfield*, Bradford.

Mr. *Cardwell*, Liverpool.

Mr. *P. Carew*, St. Austel.

Mr. *Chaplin*, Salisbury.

Colonel *Chatterton*, Cork.

Mr. *Childers*, New Malton.

Sir Montague Cholmley, Barton-upon-Humber.

Sir W. Clay, Tower Hamlets.

Sir George Clerk, Members of Society of Agents or Solicitors before the Court of Sessions of Scotland.

Mr. Gidden, Tenbury Wells.

Mr. Cowan, Society of Solicitors of Supreme Courts of Scotland.

Mr. Deaneau, Wexford.

Mr. Dicoett, Exeter.

Mr. Henry Drummow, Surrey.

Sir James Duke, London.

Mr. Duncuft, Oldham.

Sir James East, Winchester.

Vincent Ebrington, Plymouth Law Society.

Mr. Ebscourt, Devon.

Sir De Lucy Esame, Westminster.

Sir Robert Ferguson, Londonderry.

Mr. Eitroy, Lewes.

Mr. Milner Gibson, Manchester.

Mr. Gronger, Durham.

Mr. John Green, Kilkenny.

Mr. T. Greene, Lancaster.

Mr. P. Greenfell, Preston.

Lord Robert Grosvenor, Modbury; Ross; Boston; Beverley; Halifax; Market Harborough; Beigate; High Wycombe; Newark-upon-Trent; Soham; Woodbridge; Guildford; Worthing; Ulverston; Penzance; Littleborough; Spilsby; Mold; Holywell; Baintree and Bocking; Bideford; Bridgwater; Mildenhall; Frome; Huddersfield; Settle; Haslegh; Rugeley; Brentwood; Wem; Whitchurch; Llandilo; Wansham; Haverfordwest; Cardiff; Ipswich; Darlington; South Shields; Carmarthen; Warwick and Leamington Priors; Market Rasen and Caistor; Wallingford; Daventry; Cirencester; Hitchin; Rochdale; Epsom; Farnham; East Retford; Greenwich; Newton Abbott; Seidport; Westwick; Dartford; Maidstone; Nancton; Dapford; Brentford; Gainsborough; Birmingham; Dover; Pembroke; Callington; Cockermouth; Buckingham; Portsea; Gosport; and Portsmouth; Atherstone and neighbourhood; Cowes, Isle of Wight; Kettering; Great Yarmouth; Glamford Briggs; King's Lynn; Dolgelly; Bridgend; Beccles; Oxford; Bodmin; Birkbehead; Trowbridge; Coventry; Hemel Hempstead; St. Helier, Jersey; Stonehouse; Louth; Malden; Aberystwith; Dereham; Wimborne Minster; Canterbury; Crediton; Torquay; Teignmouth; Penzance; Huntingdon; Hinchley; Okshampton; Langport; Halestead; Honiton; Truro; Pontypool; Rye; Newport Pagnell; Evesham; Stratford-upon-Avon; Richmond; Rotherham; Luton; Oswestry; Faringdon; Stourbridge; Ledbury; Newcastle, Stafford; Gravesend; Sudbury; Margate; Wellington; Tezbridge Wells and Tezbridge; Ashford; Lynton; Dursley; Ramsgate; Hungerford; Tenterden; Bromsgrove; Lichfield; Ryde, Isle of Wight; Falmouth; Kingston-upon-Thames; Tewkesbury; Ely; Kidderminster; Dewsbury; Shipston-on-Stroud; Dudley; Whiby; Kingsbridge; Aylesbury; Banford; Rugby; Bury; Knaresford;

Congleton; Bolton; Ainswick; Blackburn; Wakefield and neighbourhood; North Shields and Tyne; Thirsk; Middlewich; Stokeley; Shipton; Doncaster; Driffield; Howden; Richmond, York; Colne, Lancaster; Burnley; Hexham; Berwick-on-Tweed; Leigh, Lancaster; Selby; Barnsley; Workington; Ripon; Sunderland; Barnard Castle; Hartlepool; Wigau; Halifax; Altrincham; Chorley; Stockton; William Mitchell, (Writer); Dunkeld; Incorporated Law Society; Attorneys and Solicitors practising in Metropolis.

Mr. Halsey, Bishop's Starford; Ware.

Mr. George Hamilton, Members of Society of Attorneys and Solicitors in Ireland.

Mr. Harcastle, Colchester.

Mr. Alexander Hastie, Dean and Faculty of Procurators, Glasgow.

Mr. Heald, Stockport.

Mr. Heathcoat, Tiverton.

Mr. Hensley, Bedford.

Mr. Henry, Bury.

Mr. Henry Herbert, Keny.

Mr. Robert Hildyard, Whitehaven.

Sir Alexander Hood, Crewkerne; Yaovil.

Mr. Alexander Hope, Maidstone.

Mr. Locke King, Richmond, Surrey.

Mr. William Lawcelles, Knaresborough and Harrogate.

Viscount Mahon, Hertford.

Mr. Manly, Watford.

Mr. Philip Miles, Bristol.

Mr. William Miles, Wincanton; Glastonbury; Axbridge.

Mr. Mullings, Cirencester.

Lord Norreys, Witney.

Mr. O'Flaherty, Galway.

Mr. Osborne, Middlesex.

Mr. Robert Palmer, Newbury.

Mr. Maurice Passer, Farnley, Cusk.

Mr. Prime, Arundel.

Mr. Pugh, Wexham.

Mr. John Ricardo, Hanley and Shelton.

Mr. Seymour, Sherborne.

Mr. Vernon Smith, Northampton.

Mr. Smyth, York.

Mr. Solicitor-General, Metropolitan and Provincial Law Association Committee.

Lord Dudley Stuart, Marylebone.

Mr. Start, Dorchester.

Mr. Tennant, Belfast.

Mr. Thornely, Wolverhampton.

Mr. F. Tollemache, Grantham.

Mr. Townley, St. Ives.

Captain Townshend, Tamworth.

Mr. J. H. Vivian, Swansea.

Mr. Vyse, Northampton.

Mr. West, Wexham; Bathin.

Mr. M. Wilson, Clitheroe.

Mr. Wrightson, Northallerton.

Mr. Williams Wynne, Newtown; Gloucester; Saxmundham; Watford and Rickmansworth; St. Albans; Reading; Horncastle; Loughborough; Mallow, Cork.

This List comprises 279 Petitions.

The Signatures to which are . . . 3,649

Members of the Incorporated Law Society.

Exclusion of the number represented by the several Societies in Edinburgh and Glasgow.

BANKRUPT AND INSOLVENT MEMBERS' BILL.

THE bill introduced by Mr. Moffatt, "to amend the Law relating to Bankrupt Members of the House of Commons, and to vacate the Seats of Bankrupt and Insolvent Members, and to facilitate the recovery of Debts from such Members," met with so little favour from the body whose purification was contemplated, that it was rejected on the motion for a second reading by a considerable majority. It may be conceded, perhaps, that this result has not created very much surprise or disappointment out of doors. Still, we believe there are a considerable number of thinking persons whose sentiments on such a subject are entitled to respect, and who firmly believe that the legitimate influence of the House of Commons would be increased, and a scandal removed from our legislative institutions, if some means could be devised by which persons notoriously and discredibly insolvent could be relieved from the responsibility and divested of the importance and influence attached to the position and character of a British legislator. It is but fair to state that Mr. Moffatt's bill was not discussed or dealt with as a party question; but we may be permitted to doubt if the real grounds of hostility were those most strenuously insisted upon in the course of the debate. The second reading of the bill was resisted mainly on the ground, that it was an unnecessary interference with the rights of electors, but a consideration of the clauses of the proposed bill, shows how little weight such an argument was entitled to.

It will be perceived from a summary of the clauses of the bill, which is subjoined, that the main scope and object of it was to place insolvent members of the House of Commons on the same footing as members in trade after they are made bankrupt, and to provide that declared insolvency, as well as bankruptcy, should operate so as to render the seat of the bankrupt or insolvent member vacant.

"1. That if any member, not being a trader, shall be indebted in any sum of money actually due and payable, upon any judgment, decree, rule, or order of any Court of Law or Equity

in England or Ireland, such sum not being secured by any mortgage, charge, or lien upon real property, the creditor may apply to the Court at which the judgment, decree, rule, or order is made, or any judge thereof, to fix a peremptory day for payment of the money."

"2. The creditor, before applying to the Court or judge to fix a peremptory day for payment, is to give 21 days' clear notice to the member of his intention to apply to name such peremptory day, and the Court, ordering a peremptory day for payment, is to fix such day with an interval of at least 21 days from the time of making such order."

"3. If the money shall remain unpaid after the day fixed for payment, the creditor may apply to the Insolvent Debtors' Court in England or Ireland, to adjudge the member insolvent, and upon such adjudication a certificate of such adjudication is to be forwarded by the Insolvent Court to the Speaker."

"4. The seat of the insolvent member is to be vacant after the receipt of a certificate of insolvency by the Speaker."

"5. Persons declared insolvent under the provisions of this act subjected to the same laws for the relief of Insolvent Debtors generally."

"6. Member becoming bankrupt in Scotland, one of the principal clerks of the Court of Session to certify to the Speaker, and upon receipt thereof the seat of such member declared vacant."

"7. Clerks of the Bill Chamber in Scotland to send a like certificate of sequestration to Speaker, and thereupon the seat to be vacant."

"8. Repeal of the 52 Geo. 3, c. 184."

"9. Member declared bankrupt to be incapable of sitting or voting after the lapse of six months from the bankruptcy, unless the fiat be suspended, or the creditors paid or satisfied. Disputed debts not payable by judgment, decree, rule, or order, to be considered for the purposes of this act as paid, if the member enters into a bond, with two sureties approved by the Commissioner, to pay such sum as may be recovered and costs."

"10. When bankruptcy not superseded nor debts satisfied within six months, Bankrupt Commissioner to send certificate to Speaker, and member's seat declared vacant."

"11. When seat is vacated, bankrupt or insolvent member not to be re-elected, unless he has obtained his certificate, discharge, or final order for protection, as the case may be."

"12. When the House not sitting, Speaker to issue his writ for a new election when seat becomes vacant by bankruptcy or insolvency."

"13. Provisions of 24 Geo. 3, c. 26, and 52 Geo. 3, c. 144, for appointing members to act for the Speaker, in case of his absence or of a vacancy in the office of Speaker, extended to cases where the seats of members become vacant under the provisions of this act."

By this bill the seat of a member adjudged insolvent by a competent tribunal would, ipso facto, become vacant; and this provision would not imperiously command

ship of the constituency by which the insolvent member was returned or restrict them in the exercise of their choice. Having selected as their representative one whom it might be assumed was able as well as willing to fulfil his pecuniary obligations, when it turned out that he was unable to meet his engagements, the constituency would be called upon again to determine if they desired to retain the services of a member so circumstanced. If willing to re-elect him they were only precluded from doing so "until he obtained his certificate as a bankrupt, or obtained an adjudication to be discharged forthwith, or a final order for protection" if insolvent. As a certificate, or adjudication to be discharged, or an order to protect, are only refused to bankrupts and insolvents guilty of fraud or gross misconduct in their dealings with creditors, it is preposterous to contend that restraining a constituency from returning a man thus branded would be an undue interference with constitutional rights. The exercise of the duties of membership are not confined to those exclusively affecting the constituency which has returned the member; and an electoral body who were disposed to return a fraudulent bankrupt or insolvent, ought to be prohibited from doing so upon the principle that society can only be maintained by restricting the enjoyment of rights the exercise of which would be injurious to others.

Had Mr. Moffatt's bill been adopted by the House of Commons, it might undoubtedly have consigned to their pristine obscurity some few individuals to whom a fictitious importance now attaches, but it would operate as a legislative declaration that the violation of pecuniary obligations ought to be regarded in the light of a social offence, the commission of which should be followed by a temporary political disqualification. The express adoption of such a principle would tend more than any alterations in the Bankrupt and Insolvent Laws to discourage habitual improvidence and the fraudulent contraction of debts, and its salutary influence, whilst participated in by all portions of the community, would be peculiarly beneficial in that class which in rank is generally regarded as the most elevated.

We have referred at greater length than usual to the "Bankrupt and Insolvent Members' Bill," because, although dispeared of for this Session, it does not appear that the merits have been fully discussed, and if the principle be deserving of

commendation, and meets with the extensive approval which we believe it does, the subject will probably be brought under consideration on some future occasion.

MASTERS' JURISDICTION IN EQUITY BILL.

ANALYSIS OF THE CLAUSES.

In any case in which a suit might be instituted in the Court of Chancery for administration or account; and in such other cases as Court shall direct, the matter may be carried primarily before the Master in Ordinary in rotation; Sect. 1.

Service of notice, &c., as to such matter to be made as the Master shall direct; 2.

Master to have power to entertain or dismiss the application, wholly or in part; 3.

If the Master entertain the application, he is to have the same jurisdiction as would have been had by the Court; 4.

Master may appoint guardians to infants; 5.

After the Master has made an order entertaining the application, or after reference to him, no creditor to sue without leave of the Master; 6.

Proof of debts by executor, &c.; 7.

Books of account may be adopted, and the Master may employ an accountant; 8.

Master's orders to have the same effect as orders of Court; 9.

Appeal from the Master's orders, rehearings, &c., within a limited time; 10.

Court may direct a suit to be instituted, or any party interested may institute a suit, but upon peril of costs; 11.

Master may direct a suit to be instituted, or may make a special report concerning the same; 12.

Where suit instituted, proceedings before Master to be valid; 13.

Payment, taxation, and recovery of costs of proceedings under this act; 14.

Within six months from the passing of this act the Masters in Ordinary to make rules and orders for procedure under this act; 15.

Lord Chancellor to make rules and orders for extending scope of act; 16.

Until such rules, &c. be made, proceedings to be carried on as the Master shall direct; 17.

Application to the Master to constitute a *his pendens*; 18.

Applications may be made to Master for partial relief, &c.; 19.

Master may make order for consolidation of two or more proceedings; 20.

As to transmission of interest by death, marriage, &c. of party to proceeding under this act; 21.

Parties may be classified, and representatives of class appointed; 22.

District Commissioners in Bankruptcy and Judges of the County Courts, appointed Commissioners for taking evidence under this act; 23.

Courts, judges, &c. to take judicial notice of signature of Master or registrar, and of office seals of Court of Chancery, subscribed to orders, reports, &c. made or signed under this act; 24.

In case of illness or absence of the Master any other Master may act; 25.

EXTENSION OF JURISDICTION OF COUNTY COURTS.

THE following is an Analysis of the Bill :—

1. Preamble. 9 & 10 Vict. c. 95, s. 58; 12 & 13 Vict. c. 101. Extension of jurisdiction to 50*l*.

2. Fees to be taken according to schedule. Power to Secretary of State, with consent of the Treasury, to alter fees.

3. 9 & 10 Vict. c. 95, s. 39; 9 & 10 Vict. c. 95, s. 40. Limiting amount of salaries to be paid to judges to 1,500*l*., and clerks to 800*l*.

4. 9 & 10 Vict. c. 95, s. 60. Summons may issue in any district in which plaintiff may reside or carry on business.

5. 9 & 10 Vict. c. 95, s. 91. The Lord Chancellor to settle and regulate the fees to be taken by barristers and attorneys.

6. 9 & 10 Vict. c. 95, s. 128; 9 & 10 Vict. c. 95, ss. 128 and 129, repealed, except as to actions commenced before the passing of this act.

7. Plaintiffs recovering in the Superior Courts sums not exceeding 50*l*. in actions of contract, or 20*l*. in actions of tort, over which the County Court has jurisdiction, to have no costs.

8. Plaintiffs recovering in the Inferior Courts not exceeding 10*l*. in actions of contract, or 5*l*. in actions of tort; over which the County Court has jurisdiction, to recover no costs.

9. Judge at the trial may certify to entitle the plaintiff to costs.

10. If the Court or a judge at chambers make an order, the plaintiff to have costs.

11. Before whom affidavits may be sworn.

12. Either party may appeal in certain cases.

13. Proceedings on appeal.

MEMOIR OF

THE LATE MR. WILLIAM LOWE.

It has been our duty, during nearly twenty years, to record the decease of many distinguished members of the profession in all its branches. We have not limited our memoirs to the distinguished members of the Bench and Bar, but have been ready at all times to notice the merits of the junior or larger branch of practitioners. Whilst the Judges and Advocates of the Superior Courts, associated as they often are with public events of great importance, furnish ample materials for the biographer, we believe that "the noiseless tenor of the way"

of many in the other department of legal practice, if sufficiently known, would supply the details for a narrative of the highest interest. The name of a celebrated advocate may be connected with Trials of the greatest note, and the judge may be distinguished as a Legislator, but in all the most interesting and important transactions of human society, from the highest to the lowest, the Solicitor must necessarily be consulted,—his advice obtained,—his active and sagacious aid called into exercise, in the investigation of facts and circumstances, numerous, complicated, and difficult of ascertainment. He does not depend upon "written instructions," but meets the parties and the witnesses face to face. He sifts the matter in issue through all its ramifications,—makes allowance for exaggeration—for misapprehension—for concealments—and for the various other forms of interested representations. He has then to give his conscientious advice, and in cases of doubt and difficulty he selects from a numerous Bar the most competent person to assist his client.

Can any duty in the administration of justice be more important than that which the solicitor has thus to perform? In numerous instances the most momentous family secrets are confided to his keeping. Often it happens, that the legal learning, however profound, of the most eminent members of the Bar, can afford no aid. It is a case without the pale of forensic skill and knowledge: the remedy must be found in long and careful treatment of the subject—in judicious negotiation—in steps made with the greatest caution, guided by long experience, and under the influence of the highest character for probity and judgment.

All, however, of these measures, for the good of the client, are silently conducted, with long-continued patience and perseverance. None but the client himself knows the anxious consultations which take place,—the meditations early and late, which the solicitor bestows—his disturbed rest; uncheered by anticipation of the credit he will acquire in the discharge of his difficult duty before a public Court. No! his reward must consist in the conscientious discharge of his duty, and the conviction that he has left nothing undone that could contribute to the just interests of his client.

We must not seek for any narration of the instances which would illustrate the professional character and merits of a solicitor, for the lips of his survivors are sealed; and to describe the exertions he had be-

showed and the wisdom of his conduct, would be a disclosure of the secrets of his clients. We must point only to the results, to the position which he has attained amongst his brethren, and the general esteem which he has inspired by his professional integrity and intelligence:

These remarks particularly apply to the gentleman whose recent decease his numerous friends have deeply to regret. We refer to Mr. William Lowe, (late of the firm of Messrs. John and William Lowe, of Tanfield Court, Temple,) who died on the 21st December, 1849, in the 80th year of his age.

Mr. W. Lowe was born at Middlewich, in Cheshire, on the 5th April, 1770; and, having been educated at the grammar school at Macclesfield, he came to London in the early part of the year 1787, and was articled to his uncle Mr. John Manley, (the elder brother of Mr. Serjeant Manley,) then and for many years carrying on the business of a solicitor in Lamb Buildings, Temple. Soon after the completion of his articles, namely, in Hilary Term, 1794, Mr. William Lowe was admitted on the Rolls of the several Superior Courts, and in the same year we find that he and his elder brother, Mr. John Lowe, (who was also articled to Mr. Manley, and admitted in Michaelmas Term 1790,) were in partnership with Mr. Manley, and so continued until the death of the latter in the year 1810. The extensive practice of the office called forth all the intelligence and assiduity of the several members of the firm.

The subject of our memoir possessed many qualifications peculiarly fitting him for the official duties of an attorney. He was acute, energetic, untiring in the pursuit of his object, yet remarkably cautious and circumspect. He took extraordinary pains in settling not only the general terms of the papers and documents he had to prepare, but applied his mind to their most minute and verbal accuracy for the purposes of his client.

Whilst remarkable, however, for the utmost zeal in the business in which he was engaged, he conducted himself towards his professional brethren with so much fairness and courtesy, that we believe no one was more generally esteemed and regarded by his professional brethren. One of the first examples of that esteem was shown by his election to the Committee of *The Law Society*, "for the promotion of fair and honourable practice," of which Mr. Estcourt, and afterwards Mr. Kaye, then the Bank solicitor,

were prolocutors. The most eminent solicitors of the time were associated in that society, but which ultimately merged in the Law Institution or Incorporated Law Society. Another professional association with which Mr. W. Lowe was intimately connected from its first formation was, *The Law Life Assurance Society*, of which he was an active director, regularly attending the meetings of the board until a recent period before his decease. The extraordinary success of that society is well known, and it forms an example of the benefit resulting from a cordial union of the eminent practitioners of both branches of the profession.

We have next to notice, that in and previous to the year 1824, when Mr. Bryan Holme was forming the plan of "the Law Institution," his friend, Mr. Wm. Lowe, was one of the earliest whose advice and assistance were requested. He and his brother liberally subscribed towards the purchase of the land and the erection of the building. The late Mr. Richard White was the first chairman, and Mr. William Lowe the first deputy; he succeeded to the chair, and was from time to time re-elected a member of the Committee of Management, and afterwards of the Council of "the Incorporated Law Society," under the new charter. The society, and through its medium the profession, derived great advantage from the energy and judgment for which Mr. William Lowe was distinguished, up to a very late period of his life. It may be truly said, that the members of the society, still less the other members of the profession, do not sufficiently appreciate the services rendered by the council in their frequent and anxious consideration of the various matters which affect the interests of the profession. In these important deliberations Mr. William Lowe took great interest, and often bestowed much time; well considering all the steps which ought to be adopted, and having regard not only to the immediate but to the permanent interests of the profession.

It may also be mentioned that he was one of the earliest members of a Law Club, founded by the late Mr. Lowten, an eminent solicitor and clerk of Nisi Prius under Lord Ellenborough. The influence of that society soon succeeded in abating, and ultimately removing, the feeling of hostility which had previously prevailed, to a great extent, between the solicitors in the City and those in the neighbourhood of the Inns of Court and the west part of the metropo-

him. It owed its origin, and led to a dispute between two eminent solicitors, who, having referred the question to Mr. Lowen, it was settled so much to their satisfaction, that in order to prevent similar misunderstandings, equally injurious to themselves and their clients, the Lowtonian Club was formed, which has from time to time included a considerable number of the most eminent practitioners, holding the most honourable offices entrusted to that branch of the profession, namely, the Bank of England, the India House, the Office of Woods, &c. In the selection of candidates for many years past Mr. W. Lowe, with the common consent of the society, exercised considerable influence, and, we believe, we may most truly state, that if the custom of the society had allowed any special minutes to be entered on their proceedings recording the deaths of members, (which is never done except for those holding office in the Society,) there are few persons who would have received a stronger expression of regard and esteem than Mr. W. Lowe.

The concerns of these various associations, and especially the Law Institution,—with those of his family, and other connections in private life,—gave full occupation to every portion of Mr. William Lowe's time and attention that was not necessarily devoted to his clients, and continually furnished an incentive to his exertions for the advancement of their best interests, even beyond the strength of his constitution, which was far from robust, although his life was prolonged to the utmost extent usually allotted to human existence. His remains are interred in the church of St. George Bloomsbury, of which parish he was, we believe, at the time of his decease, the longest resident householder.

NOTICES OF NEW BOOKS.

Contributories, their Rights and Liabilities, under the Winding-up Acts, 1848 and 1849. With the Statutes and Notes.
By OLIVER WILLIAM FARRER, Esq.,
of the Inner Temple, Barrister-at-Law.
London: W. Maxwell, 1850.

This is a book of no great pretension either in size or title. It does not profess to exhaust the law of the Winding-up Acts; it contains no forms, and the rules of practice are mainly found in the shape of references to all the decided cases which are appended as notes to the various sections of the acts. The treatise itself is strictly con-

sistent to a consideration of the requisites necessary in order to constitute a partner a contributory, and of the extent of his liability when so constituted. Short, however, as these points appear to have in themselves, a discussion of the whole law of partnership applied to joint-stock companies, when and how does a man become a partner, when and how does he cease to be one, how far can the fundities *prout* *liabilities* *acquired* in these cases be waived, what contracts have the managing partners power to make—is a partner liable in the first instance, or only in default of payment by others—and last, not least, what are the official rights of the partners amongst themselves?

All these are questions which properly fall within the scope of this book, and are, we think, honestly and searchingly treated. It must have been obvious to every lawyer that these statutes would open a wide field for discussion and decision; but most persons will be struck on perusing this work with the multifarious ramifications and complexity of the subjects which they will bring before the Court. We are little aware, for instance, of the amazing variety in the answers to each of the above questions, which must be caused by the difference of the laws which regulate different Joint-Stock Companies. Take, for example, liability to contribution; we are shown that in unregistered companies this will be governed by one rule, in registered companies by another, in companies formed under the Companies Clauses Consolidation Act by a third, in banks formed under the old Banking Act by a fourth, in banks formed under the more recent act by a fifth; whilst in companies possessing charters, letters patent, or private acts, the liability will in each case depend on the terms of the particular instrument.

Considering that these distinctions will apply to each of the questions above noticed, and considering, moreover, that in deciding on the equities existing between the partners, each case must depend on the terms of the particular partnership contract and on the conduct of the parties, which may of course vary infinitely, it is clear that the subject is not one to be easily exhausted. The chief wonder is, that the book is not larger, and (giving the writer credit for a laudable desire to avoid "bookmaking") we can only account for this by the fact that before the passing of the Winding-up Acts there were no practical means of obtaining judicial decision on these points. The book contains some de-

bring a large distance from the Court town, and are holding office in more than one place, having assistant clerks resident in the Court towns, to transact the business, some of these assistant clerks being professional men and others not. This plan must work badly, not only for the Court, but also for the profession, who are thus deprived of offices they alone ought to hold, and I cannot see in the act of parliament, under which these Courts were established, anything to lead me to suppose this was the intention of its framers. If the resident clerks are incapable of doing the business, the non-resident clerks cannot help them on an emergency; if they are capable, why have another officer, who in many cases comes to the Court office on Court days alone, and not always then? This might easily be remedied by requiring the clerk to be an attorney and resident in his district.

This applies equally to the bailiffs, there being for some of the Courts high-bailiffs, having circuits in the same manner as the clerks, much to the hindrance of business. If the fees for transacting the business of the Court are too high, reduce them; if too low, (which is generally the case,) the class of officers will not be improved by this division of labour and pay. I believe paying officers of Courts of justice by fees is bad in principle, as tending to promote litigation.

There are many small points as to uniformity in practice which would make the Courts work better, and I cannot see, without regret, that the rules of practice are framed by the judges, without reference to the clerks, who alone are practically acquainted with the working of the act. It should also be provided in the new bill, that all these Courts should be opened in the morning, and not in the afternoon as in some instances is at present the case; thus keeping the suitors and their witnesses from returning home the night of the trial. If a small per centage on the debt was charged to the suitor on entering his plaint, and a further per centage on the hearing, (which might be calculated on an average so as to cover the necessary disbursements,) and the whole paid to the treasurer, and he was to pay the officers' stationery and other expenses, it would save the clerks an immense deal of time and trouble now necessary to fill up upwards of eighty columns in the plaint and fee books.

Districts in which there is hardly any business might be merged in others adjoining, as might be thought expedient. It would also be a great improvement, if each district was compelled, by rate on each parish therein, to build a proper Court-house (which might be used by the magistrates for their petty sessions) instead of sitting as at present in public-houses.

AN ATTORNEY.

[We are obliged by these suggestions, and shall be glad to receive others. We believe that such suggestions will be acceptable to the Commissioners who are engaged in considering the rules of practice.]

SUGGESTED IMPROVEMENTS.

Sir,--In compliance with your request, that the readers of the "Legal Observer", would state their opinion on any points coming under their notice, which they consider would be beneficial in carrying out the County Courts Act, and being myself both as an officer and an attorney practically acquainted with their working, permit me to call your attention to what I believe would increase their usefulness, without increasing their present charges. I have found in almost every circuit I have had any thing to do with a great variance, in the practice,—the judge of one Court deciding in accordance with the established rules of law laid down by the Superior Courts, at Westminster, and the judge in an adjoining Court, setting both law and equity aside, and making his Court one of conscience alone. This fundamental principle should be settled in the bill which was introduced into the House of Commons, on the 26th of last month, amidst a very interesting discussion on the merits of these Courts, in which they were allowed to work exceedingly well.

There are in many of the Courts, clerks

COUNTY COURTS.

YORK CIRCUIT.

Courts are appointed to be held at the following places and times, before ALFRED SEPTIMUS DOWLING, Serjeant-at-Law, Judge of the Courts.

1850.	APRIL.	MAY.	JUNE.	Last day for entering Plaintiff where the defendant lives out of the Court Town.	COURT DAYS.	Last day for entering Plaintiff where the defendant lives in the Court Town.	COURT DAYS.	Last day for entering Plaintiff where the defendant lives out of the Court Town.	COURT DAYS.	Last day for entering Plaintiff where the defendant lives in the Court Town.
York (County Court), Tuesday, 9th at 10 a.m.	29th March, ..	26th April, ..	24th May, ..	25th April, ..	7th, at 10 a.m.	25th April, ..	4th, at 10 a.m.	25th April, ..	4th, at 10 a.m.	23rd May, ..
York (County Court), Wednesday, 10th at 10 a.m.	30th March, ..	27th April, ..	25th May, ..	26th April, ..	8th, at 10 a.m.	26th April, ..	5th, at 10 a.m.	26th April, ..	5th, at 10 a.m.	24th May, ..
Selby, .. Thursday, 11th at 10 a.m.	31st March, ..	28th April, ..	27th May, ..	27th April, ..	9th, at 10 a.m.	27th April, ..	6th, at 10 a.m.	27th April, ..	6th, at 10 a.m.	25th May, ..
Whitby, .. Friday, 12th at 10 a.m.	1st April, ..	29th April, ..	28th May, ..	28th April, ..	10th, at 10 a.m.	29th April, ..	7th, at 10 a.m.	28th April, ..	7th, at 10 a.m.	26th May, ..
Whitby, .. Saturday, 13th at 10 a.m.	2nd April, ..	1st May, ..	29th May, ..	29th April, ..	11th, at 10 a.m.	30th April, ..	8th, at 10 a.m.	29th April, ..	8th, at 10 a.m.	27th May, ..
Easingwold, .. Monday, 14th at 10 a.m.	3rd April, ..	2nd May, ..	30th May, ..	30th April, ..	12th, at 10 a.m.	1st May, ..	9th, at 10 a.m.	30th April, ..	9th, at 10 a.m.	28th May, ..
Richmond, .. Tuesday, 15th at 10 a.m.	4th April, ..	3rd May, ..	31st May, ..	1st May, ..	13th, at 10 a.m.	2nd May, ..	10th, at 10 a.m.	1st May, ..	10th, at 10 a.m.	29th May, ..
Richmond, .. Wednesday, 16th at 10 a.m.	5th April, ..	4th May, ..	1st June, ..	2nd May, ..	14th, at 10 a.m.	3rd May, ..	11th, at 10 a.m.	2nd May, ..	11th, at 10 a.m.	30th May, ..
Leyburn, .. Thursday, 17th at 10 a.m.	6th April, ..	5th May, ..	2nd June, ..	3rd May, ..	15th, at 10 a.m.	4th May, ..	12th, at 10 a.m.	3rd May, ..	12th, at 10 a.m.	31st May, ..
Stokesley, .. Friday, 18th at 10 a.m.	7th April, ..	6th May, ..	3rd June, ..	4th May, ..	16th, at 10 a.m.	5th May, ..	13th, at 10 a.m.	4th May, ..	13th, at 10 a.m.	1st June, ..
Northallerton, .. Saturday, 19th at 10 a.m.	8th April, ..	7th May, ..	4th June, ..	5th May, ..	17th, at 10 a.m.	6th May, ..	14th, at 10 a.m.	5th May, ..	14th, at 10 a.m.	2nd June, ..
Ripon, .. Sunday, 20th at 10 a.m.	9th April, ..	8th May, ..	5th June, ..	6th May, ..	18th, at 10 a.m.	7th May, ..	15th, at 10 a.m.	6th May, ..	15th, at 10 a.m.	3rd June, ..
Ripon, .. Monday, 21st at 10 a.m.	10th April, ..	9th May, ..	6th June, ..	7th May, ..	19th, at 10 a.m.	8th May, ..	16th, at 10 a.m.	7th May, ..	16th, at 10 a.m.	4th June, ..
Ripon, .. Tuesday, 22nd at 10 a.m.	11th April, ..	10th May, ..	7th June, ..	8th May, ..	20th, at 10 a.m.	9th May, ..	17th, at 10 a.m.	8th May, ..	17th, at 10 a.m.	5th June, ..
Thirsk, .. Wednesday, 23rd at 10 a.m.	12th April, ..	11th May, ..	8th June, ..	9th May, ..	21st, at 10 a.m.	10th May, ..	18th, at 10 a.m.	9th May, ..	18th, at 10 a.m.	6th June, ..
Knaresborough, .. Thursday, 24th at 10 a.m.	13th April, ..	12th May, ..	9th June, ..	10th May, ..	22nd, at 10 a.m.	11th May, ..	19th, at 10 a.m.	10th May, ..	19th, at 10 a.m.	7th June, ..
Knaresborough, .. Friday, 25th at 10 a.m.	14th April, ..	13th May, ..	10th June, ..	11th May, ..	23rd, at 10 a.m.	12th May, ..	20th, at 10 a.m.	11th May, ..	20th, at 10 a.m.	8th June, ..
York (Inquests), .. Saturday, 26th at 10 a.m.	15th April, ..	14th May, ..	11th June, ..	12th May, ..	24th, at 10 a.m.	13th May, ..	21st, at 10 a.m.	12th May, ..	21st, at 10 a.m.	9th June, ..
Boatton, .. Sunday, 27th at 10 a.m.	16th April, ..	15th May, ..	12th June, ..	14th May, ..	25th, at 10 a.m.	14th May, ..	22nd, at 10 a.m.	14th May, ..	22nd, at 10 a.m.	10th June, ..
Boatton, .. Monday, 28th at 10 a.m.	17th April, ..	16th May, ..	13th June, ..	14th May, ..	26th, at 10 a.m.	15th May, ..	23rd, at 10 a.m.	15th May, ..	23rd, at 10 a.m.	11th June, ..
Boatton, .. Tuesday, 29th at 10 a.m.	18th April, ..	17th May, ..	14th June, ..	15th May, ..	27th, at 10 a.m.	16th May, ..	24th, at 10 a.m.	16th May, ..	24th, at 10 a.m.	12th June, ..

The following RULES for the regulation of the practice of the Court have been made by the Judge.

1. The Court will not hereafter sit before 10 o'clock in the morning.
2. No Case where the Defendant resides out of the District of the Court, will be heard before 1 o'clock, without consent.
3. No Case will be commenced after half-past 4 o'clock in the afternoon, (except under special circumstances.)
4. No Case of an opposed Insolvent will be taken before 11 o'clock, (without consent.)

(By Order.) RICHARD PARKINS, Clerk of the Courts.

[We have the judicious arrangements here adopted, will be followed in the other Courts, for the convenience both of the suitors and practitioners.—Ed.]

NEW ORDERS OF THE COURT OF CHANCERY.

SETTING DOWN CAUSES.—REDUCTION OF FEES.

Saturday, 23rd Feb. 1850.

THE Right Honourable Charles Christopher Lord Cottenham, Lord High Chancellor of Great Britain, doth hereby order and direct in manner following, that is to say,—That all causes required to be heard before the Lord Chancellor or one of the Vice-Chancellors shall, on and after the 1st day of March next, be set down for hearing by the registrars upon production to them of the certificate of the proper officer that the same is in a fit state to be set down for hearing without any fiat, order, or direction from the Lord Chancellor for that purpose. That on and after the said 1st day of March next, all causes for further directions, or on equity reserved after a trial at law shall have been had, or the certificate of a Court of Law shall have been obtained in pursuance of a decree or order pronounced by the Lord Chancellor or one of the Vice-Chancellors, and all pleas, demurrers, exceptions, and objections for want of parties, required to be heard before the Lord Chancellor or one of the Vice-Chancellors, shall be set down by the registrars for hearing on orders drawn up by them upon petition to the Lord Chancellor left with the registrar without any fiat or direction from the Lord Chancellor. That in lieu and instead of the fees heretofore receivable by the Lord Chancellor's principal secretary on his own account and on account of the gentlemen of the chamber or of any other officer of the Court of Chancery and paid at the office of the said principal secretary, he shall receive and take only the fees set out in the schedule hereto, except as to all petitions presented previous to the said 1st day of March next, the Court fees upon which are to be paid as heretofore.

COTTENHAM, C.

Schedule above referred to.

	£.	s.	d.
For every appeal or petition for rehearing of a cause	1	0	0
For every petition for a letter to any peer of this realm, and for the letter	1	0	0
For every petition, whether in a cause or where no cause is depending, the fee on the hearing heretofore payable to the gentlemen of the chamber to the Lord Chancellor	1	0	0
For copies of affidavits, per folio	0	0	4

EASTER VACATION HOLIDAYS.

Saturday, 2nd March, 1850.

Whereas, by the first article of the 8th of the General Orders of the High Court of Chancery, of the 8th May, 1845, it is provided that the Easter Vacation is to commence and terminate on such days as the Lord Chancellor

shall every year specially direct. Now, I do hereby order that the Easter Vacation for the present year shall commence on Thursday, the 28th day of March inst., and terminate on Saturday, the 6th day of April next, and that this order be entered by the registrar and set up in the several offices of this Court.

COTTENHAM, C.

Registrars' Office, }
4th March, 1850. } E.D. Colville.

COUNTRY ATTORNEYS PRACTISING IN LONDON.

To the Editor of the Legal Observer.

SIR,—It is now well known that we have railways all over the country, and that being the case, country attorneys are to be seen in London on occasions in vast numbers. I have been rather curious lately in noticing various country attorneys' faces in London within the last two months, and I have made a list of no fewer in number than 90 of these gentlemen,¹ and I have also found vast quantities of these gentlemen finding their way to, and attending to matters of business at, Somerset House and other offices, which would otherwise have gone through their London agents' hands; but the miscellaneous branch paying a professional man better than any other branch, it is an undeniable fact that country attorneys find it worth their while to save up a sufficient quantity of matters, and so take a run up to London, and thus become their own agents for town purposes.

I think it is anything but fair that such things should be allowed longer to exist, unless the country attorney condescends to take out his London as well as a country certificate to practise, and in that case the London agents could see their way clear, and not (as they do now) attribute a dearth of business entirely to the various legislative inroads made, session after session, into the legal profession, although it must be admitted they are very great. The London agent pays for his proper annual certificate to practise, and it seems extremely unfair that, seeing the London agents give such long credit and are so badly paid for their labours, that any inroad whatever should be allowed to exist, unless it be done in a straightforward manner by the country attorney taking out a London certificate to practise, (as he is compelled to do by act of parliament,) if he or they wish to practise in lieu of their London agents.

H. E.

¹ During the sitting of parliament, there are necessarily a considerable number of country solicitors in London.—Ed.

² The London certificate need not be taken out, unless the attorney practises in the Metropolis for forty days within the year.—Ed.

RECENT DECISIONS IN THE SUPERIOR COURTS

AND SHORT NOTES OF CASES.

Lord Chancellor.

Cowell v. Watts. Jan. 29, 30, 1850.

PAROL AGREEMENT.—SPECIFIC PERFORMANCE.—LACHES.

Where a party to a joint contract (not in writing) for building houses, had for the space of 18 months not interfered in the management or asserted any claim in the speculation: Held, that he was estopped from enforcing specific performance of the agreement.

THIS was an appeal from the Vice-Chancellor Knight Bruce, dismissing a bill for the specific performance of an equitable agreement between the plaintiff and the defendant, for the joint taking a piece of ground called the Grange, at Brompton, for building purposes. The bill alleged that a Mr. Bonnin, who had obtained a lease of the premises from the trustees of Smith's charity, agreed to underlet such portion as he should not require to the plaintiff and defendant; that they entered into an agreement for a partnership to build thereon; and that a deposit of 100*l.* being required, the plaintiff discounted a promissory note of Bonnin for that amount, of which the defendant gave an I O U for 50*l.*, and in May, 1843, the lease to Watts was signed. The agreement between the plaintiff and defendant was not in writing, but it was alleged that the plaintiff had turned some sheep and other cattle of his on the land in 1843, and that some of the old materials from the houses had been sent to repair the plaintiff's stables. The defendant, however, stated that the note was a mere bill transaction, and that the plaintiff's cattle were turned out of the land in 1845. The plaintiff had taken no part in the speculation for 18 months, and the defendant had the whole under his sole control. The Vice-Chancellor having dismissed the bill on the ground of the lapse of time, this appeal was presented.

Swanston and Melcalfe for the appellant; *J. Russell and Foster* for the respondent, cited *Dale v. Hamilton*, 5 Hare, 369; *Norway v. Rowe*, 19 Ves. 143.

The Lord Chancellor said, that according to the decision of Lord Eldon, in *Marquis of Hertford v. Boore*, 5 Ves. 719, the plaintiff had by his laches in setting up his claim deprived himself of any benefit to arise from the speculation, and dismissed the appeal with costs.

Feb. 27.—*Coleman v. Mellersh*—Cur. ad. vult.

March 2.—*In re Earl of Albemarle*—Master's report appointing committee of lunatic confirmed, with reference as to cutting down timber, &c.

—2.—*In re Dyce Sambre*—Stand over.

—2.—*Hirst v. Talen*—Appeal from Vice-Chancellor of England dismissed with costs.

—2.—*Wegner v. Grant, Grant v. Weaver*—Part heard.

March 2.—*In re Grey*—Petition returned of daughter of lunatic to reform her marriage settlement without consent of testator-man.

Master of the Rolls.

Hargrave v. Hargrave. Feb. 7, 1850.

ISSUE AS TO PLAINTIFF'S LEGITIMACY.—INFANT.—COUNSEL.—COSTS.

Upon the trial of a 2nd issue as to the legitimacy of the plaintiff, the respective counsel agreed to divide the intestate's estate equally, which the defendant acquiesced in, but subsequently refused to carry out the agreement. Upon a petition to carry it into effect, the Court refused to do so, on the ground of the plaintiff's infancy, but directed another issue—the costs of the former issue to be paid by the defendant.

THIS was a petition, that the defendant William Jocelyn Hargrave might carry into effect an agreement entered into by the respective counsel on the trial of an issue as to legitimacy of the plaintiff, John Robert Hargrave, and in the event of the defendant's refusal, he might pay the plaintiff's costs of the trial. It appeared that there having been two issues as to the plaintiff's legitimacy, the verdict in one of which was in favour of, and the other against the plaintiff, it was agreed between the counsel that there should be an equal division of the property, and a juror was withdrawn. The defendant, however, although in the first instance he was willing to perform the agreement, subsequently refused to do so, on the ground, that as the plaintiff was a minor it was invalid, and that his counsel had no authority to enter into such an agreement.

Turner and Ryle in support; *Lloyd and Glasce*, contra.

The Master of the Rolls said, that the defendant's counsel had authority to make the agreement, but that having regard to the plaintiff's infancy and the circumstances of the case, a new trial would be directed. The defendant must, however, pay the costs occasioned by the preparations for the former trial, including Court fees, except so far as they could not be made available in another trial, and the costs of this petition to be costs in the cause.

Feb. 27, 28, March 1.—*Thorner v. Sheard and others*—Cur. ad. vult.

March 2.—*Hooper v. Salmon, Twigg v. Hooper*—Plaintiff held entitled to surcharge and falsify the defendant's account.

—2.—*Dunsmuir v. Birkenhead, Lancashire, and Chester Junction Railway Company*—Demurrer overruled.

—4.—*Londonderry and Enniskillen Railway Company v. Leishman*—Demurrer allowed.

—4.—*Green v. Webb*—Demurrer allowed with costs.

—5.—*Salomons v. Laving and others*—Cur. ad. vult.

WILLIAM HILL v. BENNETT. Feb. 6, 1850.

DECRETAL ORDER.—BILL OF REVIVOR AND

RECEIVER APPOINTED.—**TAKING BILL OFF FILE.**

Where a bankrupt should file a bill of revivor and a receiver appointed within a fortnight, or the bill stand dismissed, and such order was not complied with in the time specified, the bill was, in motion, ordered to be taken off the file.

This was a motion to take the bill off the file in a suit instituted for the dissolution of partnership of Messrs. Hill and Everill, solicitors, the former having assigned his interest to trustees for payment of his debts, who were made defendants. Mr. Hill having subsequently become bankrupt, a decretal order was made in November, 1849, that his assignees should file a supplemental bill and bill of revivor within a fortnight, or the bill be dismissed and the receiver appointed in the suit should pass his accounts, &c. No bill having been filed until 11 days after the expiration of the fortnight, although notice of motion for the decretal order had been served on the solicitor to the assignees, this motion was made.

Beckett in support of the motion. *Milnes and Welford*, contra, cited *Eggs v. Deely*, 11 Beav. 241; *Lashley v. Hogg*, 21 Ves. 602.

The Vice-Chancellor said, that notice of motion for the order of 16th November had been given to the solicitor of the assignees, who might have appeared to oppose it; and as no such opposition was made to the order, which was a decretal order, and not a decree in the strict sense of the term, they were bound by it. The motion to take the bill off the file would therefore be granted.

Feb. 27.—*Barrow v. Fenton*.—Injunction to restrain sale of furniture.

—28.—*Padwick v. Hunslop*.—Bill dismissed with costs.

March 1.—*In re Lilley's Trustees*.—Order for investment under 8 Vict. c. 18, with costs.

Feb. 27, 28, March 1.—*Mayor of Berwick, &c., v. Murray*.—Decree for account of transactions between treasurer of the corporation and the plaintiffs, and the defendant declared liable to the amount of the bond.

March 2, 4, 5.—*Trant v. Deffell*.—Part heard.

Vice-Chancellor Knight Bruce.

Beparto Partridge, in re Cross's Smith and Johnson's representatives. Feb. 1, 1850.

PETITION TO ANNUL FIAT.—ISSUE.—COSTS AGAINST PETITIONING CREDITOR.—OFFICIAL ASSIGNEE.

In an issue as to the validity of a fiat the petitioner having obtained a verdict, but the other issue having been directed, The Court

being of opinion the questions at issue were lost sight of, and a verdict to the same effect having been returned, the petitioner was held entitled to his costs against the petitioning creditor, but against the official assignee who was to be allowed his costs.

In a petition to annul a fiat, an issue was directed at law, but the Court being of opinion the points in question were lost sight of, another trial was ordered. The petitioner having again obtained a verdict against the validity of the fiat, this application was made to obtain the property which had been received by the assignees, and to issue judgment under the first verdict against the creditors' and official assignees.

Bacon, Dwyer, and O'Malley in support; *Taylor* for the creditors' assignee; and *Patrick Johnson*, official assignee, in person, contra.

The Vice-Chancellor allowed the petitioner his costs against the petitioning creditor, George Smith, against whom execution could be issued; and said that the official assignee, who had undertaken to repay the amount he had received under the fiat, must have, as against the petitioner, his costs of the second petition; and the annulling of the fiat was stayed until accounts had been taken of the proceeds of the estate, without prejudice as to the recovery by the petitioner of his costs.

Turner v. Maule. Jan. 31, 1850.

ORDER ON FURTHER DIRECTIONS.—DIRECTION AS TO COSTS.—ISSUE AS TO NEXT OF KIN OF INTESTATE.

An order, made on further directions, which was silent as to costs, was varied by ordering the costs of the Solicitor to the Treasury and of the Attorney-General to be paid out of the fund in Court to which the plaintiffs had established their right as next of kin of an intestate to whom the Solicitor to the Treasury had taken out administration on behalf of the Crown.

This was an application for the payment out of the fund in Court of the costs incurred by Mr. Maule, the Solicitor to the Treasury, who had taken out administration to an intestate's estate on behalf of the Crown, there not appearing to be any next of kin. The plaintiff had afterwards established his right to the property, but the order on further directions was silent as to the costs of the issue directed to be tried, and in which the plaintiffs had succeeded. (See ante, vol. 38, p. 432.)

The Solicitor-General and Wray in support; *Wigram and Freeling* contra.

The Vice-Chancellor directed the order to be varied by allowing the costs of Mr. Maule and of the Attorney-General, as between solicitor and client, to be taxed as if Mr. Maule had been a defendant and the Attorney-General not a party; but the costs of the issue not to include the examination of witnesses examined in chief for the defence, and no further costs to be allowed after the date of the order.

Feb. 26.—*Peppin v. Great Western Railway Company*—Decree for specific performance of contract to proceed—Order as to costs.

—28, March 1.—*Silbering v. Earl of Crawford and another*—Bill to set aside deed dismissed with costs.

March 2.—*In re Direct Lincoln, East Retford, and Ekefield Junction Railway Company*—Order for winding up.

—2.—*In re Great Welch Junction Railway Company*—The like.

—2.—*In re Jamaica (Pillbrow's), Atmospheric Railway Company*—The like.

—2.—*In re Cheltenham, Oxford, and Brighton Railway Company*—The like.

—2.—*In re Madrid and Valencia Railway Company*—Stand over.

—2.—*In re Royal Bank of Australia*—Stand over.

—4.—*Ex parte Emerson, in re Emerson*—Application refused.

—5.—*Parlier v. Sheffield, Rotherham, Barnsley, Wakefield, and Goole Railway Company*—Reference directed in suit for specific performance of contract to purchase land.

Vice-Chancellor Higgins.

Stoney v. Stoney. Feb. 12, 1850.

BILL FOR DOWER.—DECREE.—COSTS.

In a bill for dower a decree was made with costs.

Wood appeared for the plaintiff in a bill for dower, to which the defendant did not appear. The plaintiff's title having been proved, the learned counsel asked for costs, citing *Morgan v. Ryder*, 1 Ves. & B. 20.

The Vice-Chancellor made the decree for dower, with costs.

Feb. 27.—*Hunter v. Daniel*—In abated suit order on Master to proceed with taxation as to surviving defendant's costs.

—27.—*Whitworth v. Rhodes*—Motion refused to dissolve injunction, which was however varied.

—27.—*Boreham v. Bignall*—Cur. ad. vult.

—27, 28.—*O'Brien v. Lord Kenyon*—Stand over.

March 2.—*In re Direct Bombay and Madras Railway Company*—Stand over.

—2.—*In re Dendre Valley Railway Company*—Stand over.

—5.—*Forsyth v. Elliot*—Stand over for evidence as to state of health of a witness whose evidence taken *de bene esse*, prior to the hearing of the cause, was proposed to be published.

—5.—*Solicitor-General v. Corporation of Bath*—Variation made in order made at the Rolls by consent.

Feb. 28, March 1, 2, 5.—*Money v. Dering*—Part heard.

Russell's Mount.

Regius v. Whitmarsh. Feb. 15, 1850.

MANDAMUS.—DENIED TO RETURN.

REGISTRAR OF JOINT-STOCK COMPANIES.—CORPORATION.

On a challenge to a return to a mandamus, held, that the registrar of joint-stock Companies had properly refused to register provisionally under the 7 & 8 Vict. c. 110, a change of name of an assurance company to that of an assurance corporation.

A mandamus had been granted to the defendant, who was the registrar of joint-stock companies, to receive and register the change of the name of the Sea, Fire and Life Assurance Company to that of the Sea, Fire and Life Corporation. (See ante vol. 38, p. 25.) In return the defendant grounded his refusal, that the company were not authorized to assume the new title under the 7 & 8 Vict. c. 110, to which return the company demurred.

Power in support of the demurrer, *M. D. Hill contra*.

The Court said that as no company could be incorporated until after complete registration, and the words "provisionally registered" would not remove the false impression conveyed by the title "corporation," the registrar, who was not a mere ministerial officer, might refuse to register such a name.

Court of Common Pleas.

Stow, Clerk, v. Bishop of Winchester. Jan. 26, 26, 1850.

RIGHT OF PRESENTATION TO DISTRICT CHURCH—SUIT UNDER 58 GEO. 3, c. 45.—QUARE IMPEDIT.

A district church was built under the 58 Geo. 3, c. 45, and the incumbent of the parish church, who had under that act the right of presentation, presented a clergyman, and upon his retirement, the incumbent, who resigned the parish church, presented himself, but was refused induction by the bishop. In an action of quare impedit, held, that the bishop could not set up the right of the Crown under the 25th section, to present by reason of the want of presentation by the incumbent.

THIS was an action of *quare impedit* against the defendant for refusing to induct the plaintiff to the district church of St. Mary Magdalen, Peckham. The plaintiff was the incumbent of St. Giles, Camberwell, and the district church was built by the Commissioners for Building New Churches in 1842, under the 58 Geo. 3, c. 45, by the 25th section of which, such district churches are to be deemed perpetual curacies, presentable by the incumbent of the parish church, who is to be deemed the incumbent thereof, and the right of presentation is to lapse by want of such nomination by the patron of the parish church under the 67th section, but such district church, by section 26, is not to be tenable with the parish church. By a later statute (49 Geo. 3, c. 134, s. 13), such district church, among any existing interest of the incumbent, is made a distinct bene-

free. The plaintiff resigned the incumbency of St. Giles in May, 1843, but was in the October following re-installed and inducted by the bishop. On the resignation, however, of the incumbent of the district church, whom he had appointed, the plaintiff resigned the incumbency of the parish church, and presented himself for rectory of the district church, and upon the defendant refusing to institute and induct him therein, this action was brought. The defendant pleaded that the plaintiff's right to present had lapsed to the Crown, under the 53 Geo. 2, c. 45, s. 25, the church having been vacant for more than six months.

Manning, S. L., and W. H. Cooke, appeared for the plaintiff in support of a demurrer to this plea, citing Sir W. Blair, Archbishop of York, 1104. 318; Hesketh v. Cooke, 1 Dyer, in 1, b. pl. 2; Apperley v. Bishop of Hereford, 9 Bing. 681; 3 Moo. & Scott, 102.

Hugh Hill and Sumner for the defendant, referred to Watson's Clergyman's Law, c. 2, p. 5; Vin. Abr. tit. "Presentation," l. b. 3.

The Court said, that as the declaration disclaimed a good title in the plaintiff to present himself to the district church, it was not competent to the bishop to set up the title of a third party: *Apperley v. Bishop of Hereford*, ubi supra; and by the plaintiff's presentation of himself to the district church, that of St. Giles became *ipso facto* void. The judgment must, therefore, be for the plaintiff.

Hill, P. Q., v. Welch and another. Jan. 20, 1850.

GUARANTEE.—CONSIDERATION.—STATUTE OF FRAUDS.

Where a guarantee was given for 1,000l. "advanced or to be advanced," and more than that sum had already been advanced, and there was no contract on the face of the guarantee, either express or implied, on the plaintiff's part for forbearance, held void under the Statute of Frauds.

A RULE nisi had been obtained on Nov. 8th last, upon leave reserved to set aside the verdict for the plaintiff, and enter a nonsuit in an action by the plaintiff, as public officer of the National and Provincial Bank of England, against the defendants on a guarantee. It appeared that one Richard Pinney having overdrawn his account at the Blandford Branch Bank, the defendants, M. K. Welch and G. A. Adams, on 4th Oct. 1847, gave the following guarantee:—

"We, the undersigned, hereby indemnify the National and Provincial Bank of England to the extent of 1,000l., advanced or to be advanced to Mr. Richard Pinney of Haasworthy, shipbuilder, by the Blandford Branch of that establishment; but the said indemnity to be at an end when the said Richard Pinney shall have paid in the said sum of 1,000l. to the credit of his account."

It appeared that at the time the guarantee was given, Mr. Pinney was indebted to the

bank to the amount of 1,400l. and that afterwards some further advances were made. Pinney subsequently paid a sum to his account of 179l. 10s. 10d., but having made no further payments, this action was brought on the guarantee.

Shee, S. L., and J. Wilde, showed cause against the rule, which was supported by Channell, S. L., and Barstow, on the ground that the guarantee was for an uncertain consideration, as to whether present or future advances were meant, and that as at the time the guarantee was given, Pinney was indebted to the bank in 1,400l., the guarantee was given for a consideration, which had been fulfilled to the utmost extent at the time it was executed, and was therefore void under the Statute of Frauds.

The Court said, the guarantee must be construed from the terms appearing thereon, and from the existing state of facts at the time it was given. Although the terms "advanced or to be advanced" might fairly apply to future as well as past advances, yet as more than the sum of 1,000l. had already been advanced, it became in effect a simple promise to answer the debt of another, based on the consideration of future advances, which was inconsistent with the existing state of facts; and as there was no contract either express or implied for forbearance, the guarantee was void, and the rule must be absolute to enter a nonsuit.

Exchequer.

Missinobotham v. Waters. Jan. 22, 1850.

NEW TRIAL.—CONDUCT OF JURY.—QUALIFIED VERDICT.

A rule was made absolute for a new trial where the jury delivered their verdict for 150l. for the plaintiff, and one of them said to the plaintiff's son that if he was an honest man he would allow a deduction he had previously offered of 40l., on the ground that it was uncertain whether or not they had given their verdict upon this understanding.

A RULE nisi had been granted on November 7 last, for a new trial, on the ground of the improper conduct of the jury. It appeared that the action was tried at Liverpool, before *Wightman, J.*, and that the jury had, after retiring to consider their verdict, been provided with refreshments without the knowledge of the Court, and that they had gone to the learned judge and stated their readiness to find a verdict for the plaintiff, subject to such deductions as his lordship should direct; and upon the judge's refusing to receive such verdict, they had again retired and subsequently returned a verdict for the plaintiff for 150l., the full amount of his claim. It also appeared that one of the jurors said to the plaintiff's son in Court that if he was an honest man he would allow the defendant a deduction of 40l. off, which he had previously stated his willingness to allow.

Watson and Alderson now showed cause

against the rule, which was supported by *Martin and J. Addison*.

The Court said, the verdict was most unsatisfactory, it being uncertain whether or not it had been given on the understanding that the 40*l.* was to be deducted; and made the rule absolute for a new trial.

Russell and wife v. Gibbs. Jan. 23, 1850.

ACTION FOR SLANDER.—ABATEMENT BY DEATH.—JUDGMENT AS IN CASE OF NON-SUIT.—COSTS. 232A3 70 T23

A rule nisi was discharged with costs to enter judgment as in case of nonsuit, in an action of slander against the plaintiff's wife, which had not been proceeded with in consequence of her death.

This was an action for slander against the plaintiff's wife, who had since died, and the action was consequently not proceeded with, whereupon the defendant obtained a rule nisi to enter judgment as in case of nonsuit.

Piggott showed cause, and asked for the costs of the rule.

Lush contra.

The Court discharged the rule with costs.

Court of Exchequer Chamber.

Regina v. Cluderay. Jan. 19, 1850.

INDICTMENT.—ADMINISTERING POISON.—INTENT TO KILL.

An indictment under the 7 W. 4, and 1 Vict. c. 85, for administering poison with intent to murder, was held good, although the prisoner had administered *cocculus berries* in their exterior pod, and they were therefore innocuous.

The prisoner was indicted under the 7 W. 4, and 1 Vict. c. 85, for administering poison, with intent to murder his child. It appeared that he had given two berries of the *cocculus indicus*, in the kernel of which is a narcotic poison, but that the exterior pod not being broken, they passed through without injuring the child. A conviction having ensued, sentence of death was recorded, subject to the question whether the berries given in the pod being innocuous, were within the meaning of the act.

Over and against the conviction, which was supported by *R. Hall*.

The Court held, that the berries were administered with intent to kill, and although, through the prisoner's ignorance, they did not act, he was not the less guilty under the 7 W. 4, and 1 Vict. c. 85, and the conviction was affirmed.

Consistory Court.

(*Coram Dr. Lushington*.)

Bryant and others v. White and Henson. Feb. 2, 1850.

The Court has a discretionary power to dismiss a party as a claimant of probate and declare as will void any interest in the estate of the deceased.

thereunder, although he be also an executor, for the purpose of being examined.

WILLIAM STROCK by his will dated Aug. 1849, appointed the defendants, *White and Henson*, his executors, and probate was granted to them, and in January, 1850, an order was made in the suit of *Bryant and others*, legatees under the will, on the executors, to bring in the probate and to show cause why it should not be annulled and the will declared invalid.

This application was now made to dismiss the defendant *O'Hendon* as the purpose of being examined, as he had an interest under the will.

The *Queen's Advocate*, in support of the application, which was opposed by *Dr. Addams*.

The Court held, that it had a discretionary power to dismiss a party for the purpose of being examined, and made the order accordingly.

Court of Bankruptcy.

(*Coram Mr. Commissioner Bence*.)

In re *Butt*. Feb. 5, 1850.

BANKRUPT'S CERTIFICATE.—SUSPENDING WHILE INSOLVENT.

A certificate was suspended for 12 months, and then to be of the third class of a bankrupt who had continued trading when in an insolvent state, and who had paid some of his creditors, with whom he had compounded, in full.

This was an application for the certificate of *Butt*, a Bootmaker at Winchester. It appeared the applicant was insolvent in 1847, and executed a deed of assignment in April, 1847, of all his property to his father, who guaranteed 10*l.* in the pound to some of the creditors, but he continued to carry on the business, paying in full the creditors who had entered into the composition, until May, 1847, when his father put the deed into force, but realised only 25*l.*, which he paid into the Insolvent Court. It also appeared that the bankrupt had obtained credit of *Mr. Pike*, one of the assignees, when he was totally unable to pay, and had besides expended 176*l.* in repairs and alterations of the premises.

The Commissioner said, that the bankrupt obtained credit by representing he was solvent, when he must have known he was in a state of hopeless insolvency, and had committed a fraud upon the new creditors by continuing in the business, and by paying some of the former creditors in full. The certificate would be suspended for 12 months, and then be of the third class.

Insolvent Debtors' Court.

(*Coram Mr. Commissioner Phillips*.)

In re *Barnes*. Feb. 13, 1850.

DISTRAINING BROKER.—TRADER UNDER BANKRUPTCY ACT.—DEBTS OF FOREIGN INSOLVENCY.

Samuel, a distaining broker, was examined on the 12 & 13 Nov. 1849, and found insolvent.

Insolvent Debtors' Court.—*Analytical Digest of Cases: Courts of Equity.* 371
 Held, that the debts under a previous insolvency should be included in the schedule to a petition under 1 & 2 Vict. c. 110.
 This was a petition under the 1 & 2 Vict. c. 110, by John Bartlett, a distraining broker, as a non-order, owing less than 300*l.* Nicholls, for one of the creditors, contra.

contended, that the petitioner being a "broker," was a trader under the 19 & 18 Vict. c. 108, s. 65, and besides, that the debts under an insolvency in 1834, had been omitted from the schedule, which would make the debts more than 300*l.*

The Commissioner held the objections fatal, and dismissed the petition.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see

Jurisdiction of County Courts, p. 87.

Poor Law and Magistrates' Cases, 108.

Courts of Common Law.

Construction of Statutes, 128, 145.

Principles and Jurisdiction, 165.

Appeals from Revising Barristers, p. 189.

Courts of Equity.

Law of Attorneys and Solicitors, p. 229.

Law of Property and Conveyancing, p. 246.

Evidence, p. 289.

Law of costs, p. 333.]

PLEADING.

AMENDMENT.

Under an order made at the hearing of the cause, giving the plaintiff leave to amend his bill, by adding proper parties, with apt words to charge them, or by stating reasons to show why particular persons should not be parties, or to file a supplemental bill, the plaintiff may amend by stating a grant of letters of administration to the estate of a deceased person, to one who is already a defendant in the suit, and by expunging a statement which the bill originally contained, that the deceased person had died insolvent, and had no personal representative. *Bateman v. Margerison*, 6 Hare, 502.

DEMURRER.

1. *Bill of revivor.*—*Statute of Limitations.*—*Discovery.*—A plaintiff brought an action of ejectment against a person in possession, and afterwards filed a bill of discovery in aid of the action, and to restrain the defendant from setting up outstanding terms. By the death of the defendant, the suit abated, and the benefit of the action at law became lost. After 20 years' adverse possession, the plaintiff having filed a bill of revivor, a demurrer thereto was allowed, on the ground that no effectual proceeding could now be had at law, and that the discovery and relief sought would, therefore, be useless. *Dunpton v. Birchall*, 11 Beav. 38.

2. By the effect of the 37th general order of August, 1841, the answer put in, by a defendant to an original bill, although it extends to matters retained in the amended bill, does not preclude the defendant from demurring gene-

rally to such amended bill, by overruling the demurrer, as it would have been held to do before that order was made. *Wyllie v. Elliot*, 6 Hare, 506.

3. *Foreclosure Bill.*—*Devisees.*—*Parties.*—*A. B.* mortgaged a leasehold property, and afterwards specifically bequeathed it to *A.* and *B.*, on certain trusts for *C.*, *D.* and *E.* Held, that *C.*, *D.* and *B.* were proper parties to a bill to foreclose. *Coles v. Forrest*, *Ward v. Forrest*, 10 Beav. 552.

PARTIES.

1. Where property was conveyed to 4 trustees for such of the creditors of a firm as should execute the deed, and 26 creditors (including the 4 trustees) executed the deed, a suit instituted 17 years afterwards, by some of the creditors, on behalf of themselves and the others, was sustained against the trustees, they objecting that it was defective for want of the other creditors as parties. *Bateman v. Margerison*, 6 Hare, 496.

Case cited: *Smart v. Bradstock*, 7 Beav. 500.

2. In a suit by some of many creditors, on behalf of themselves and the others, for an account of property which had been vested in the defendants, the trustees, for the benefit of such creditors, and one of the trustees died after answer, the other trustees are not necessary parties to the bill of revivor, or revivor and supplement, against the representatives of the deceased trustee.

The author of the trust, or his personal representative, is a necessary party to such a suit; and he is not regularly or properly a party thereto by being a defendant to a bill of revivor, or revivor and supplement, against the representatives of a trustee, who died after the institution of the suit, even though all the trustees are (unnecessarily) parties to such bill of revivor, or revivor and supplement; he must be made a party to the original bill, or to a bill to which the trustees are all properly defendants. *Bateman v. Margerison*, 6 Hare, 496.

3. A person, not a trustee, who is a party to a breach of trust committed by a trustee, may or may not (at the option of the plaintiff, a *cestui que trust*) be made a defendant to a suit against the trustee in respect of such breach. *Bateman v. Margerison*, 6 Hare, 499.

4. The Attorney-General does not, as a party in the cause, sufficiently represent the estate of an illegitimate person who died intestate, so as to enable the Court to dispense with

a legal personal representative of such person, duly constituted in the Ecclesiastical Court as a party. *Bell v. Alexander*, 6 Hare, 543.

5. In a suit between a part owner and managing owner of a ship, and the mortgagees of the shares of other part owners, to determine the question of right to the freight and earnings of the ship, the same being claimed by the plaintiff towards the expenses of repairs and outfit preparatory to the voyage, and by the mortgagees as applicable, in the first instance, to the payment of their debt, the assignees of the mortgagors, the other part owners, were held to be necessary parties, and not to be entitled to their costs. *Green v. Briggs*, 6 Hare, 632.

See *Foreclosure*.

PLEA.

1. *Purchase for value. — Partnership.* — A trader directed his trustees and executors, with all convenient speed, to sell and convert into money his residuary estate, but he provided, that three or (in case of any substantial reason) seven years might be allowed for withdrawing his capital from the business in which he was a partner. Parties beneficially interested under the will, filed their bill against the surviving partners and the legal personal representatives, insisting that the administratrix had improperly allowed the testator's capital to remain in the business beyond the prescribed period, and asking to have a share in the profits made while the capital remained in the business. The defendants pleaded, that before the testator's death the partners made a valuation, when the share of the testator appeared to be 63,000*l.*; that a year after his death, it was agreed between the surviving partners and the administratrix, that the new firm "should take to" the whole stock, on payment to her of 63,000*l.*, and should become purchasers of the testator's share at that sum; that they gave her a bond for 40,000*l.*, and placed the residue at her disposal, which was drawn out from time to time at her pleasure. It appeared that the capital had not been finally withdrawn till 1845. By the plea they insisted, that they had become purchasers of the share, for valuable consideration and without notice of the trusts of the will: *Held*, that this was a valid defence to the claim to participate in the profits. *Chambers v. Howell*, 11 Beav. 6.

2. A plea to a bill of revivor, by the representatives of a deceased defendant, that the party whom they represent was never served with a subpoena to appear and answer, and did not appear to nor answer, the original bill, overruled, as insufficient in substance — not excluding the fact that the deceased party might by other means have been bound by the proceedings in the original cause. *Rawlins v. Moss*, 6 Hare, 604.

REVIVOR.

Defendants to original bill. — Parties. — A suit was revived after decree by the representatives of a defendant: *Held*, that all the other defendants to the original bill were necessary parties. *Buchanan v. Malins*, 11 Beav. 52.

See *Demurrer*.

SUPPLEMENTAL BILL.

1. *Dismissal for want of prosecution.* — After a clause had been in the paper for hearing, one of the plaintiffs became bankrupt, and an order was made, that the plaintiff should file a supplemental bill in 10 days, or in default that the bill should stand dismissed. The supplemental bill was filed, but no process served or other proceeding taken: *Held*, that the plaintiff was bound to prosecute as well as file the supplemental bill, and after a delay of three years, the original bill was, on motion, dismissed with costs: *Held* also, that the defendant not having appeared in the supplemental suit, could not move to dismiss it, and that one defendant could not move to dismiss as against his co-defendants. *Ward v. Ward*, 11 Beav. 150.

2. *Residuary legatee filed a bill against the executor, charging him with wilful default, for which some grounds appeared by his answer. No evidence was entered into, and the common accounts were directed. The widow, who was a defendant, and was interested in the estate, afterwards filed a supplemental bill, without leave, to charge the executor with wilful default: Held*, that the proceeding was regular, and a decree was made, supplemental to the former proceedings. *Berrow v. Morris*, 10 Beav. 437.

Case cited in the judgment: *Shepherd v. Towgood*, Turn. & R. 393.

3. *Subsequent mortgage. — Foreclosure.* — A mortgaged to B., who filed a bill of foreclosure, and B., pending the suit, assigned to C., who mortgaged to D., and became insolvent. D. filed a supplemental bill to have the benefit of the suit for foreclosure: *Held*, that he was entitled to such relief. *Coles v. Forrest*, *Ward v. Forrest*, 10 Beav. 552.

4. *Action at law.* — The plaintiff claimed to be incumbrancer on certain real estates, and there being outstanding terms he filed his bill against the other parties interested in the property, to make his security available. By the decree, the bill was retained for 12 months, with liberty to the plaintiff to proceed at law touching the matters in question in the cause, and the defendants were restrained from setting up the outstanding terms, and from pleading the Statute of Limitations. The plaintiff brought an action of ejectment, which was defended by one of the defendants, and also by the occupying tenants; the latter not being parties to the suit, set up the outstanding terms and the Statute of Limitations, and thus defeated the plaintiff in the action. The plaintiff then filed a supplemental bill, detailing what took place at law, and praying to be let into possession, and that in any new trial the defendants might admit the plaintiff's title accrued within 20 years. Afterwards, the original decree was affirmed by the Lord Chancellor. The supplemental bill was brought on for hearing before the Master of the Rolls: *Held*, that the proceeding was irregular, and the supplemental bill was dismissed with costs. *Smith v. Earl of Bingham*, 10 Beav. 589.

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SATURDAY, MARCH 16, 1850.  
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PROPOSED EXTENSION OF THE COUNTY COURT JURISDICTION.

THE conclusive answer with which Mr. Fitzroy's motion upon introducing the Bill extending the Jurisdiction of the County Courts to 50*l.*, was met by the Attorney-General, and the little encouragement which the proposition received from any member of the government, or indeed any considerable section of the House of Commons, justifies a tolerably confident hope that the blow aimed by this measure at the legal profession—and through the profession at the administration of justice—will for the present be averted. It was intimated by Sir George Grey, however, that the government had reason to believe the matter was exciting some considerable degree of public interest, and as our readers are aware how easily public demonstrations, founded on the most transparent fallacies are got up, and how little disposed the strongest governments are, upon questions of such a nature, perseveringly to resist "the pressure from without," it is desirable the profession should be fully acquainted with the precise nature of the measure now submitted to parliament. It will be perceived by the following reference and extracts, that Mr. Fitzroy's bill is not confined to an extension of the jurisdiction, or to the changes consequent upon such extension, but that other alterations are contemplated, which cannot be deemed unimportant as regards their scope and tendency.

The 1st clause of the bill after reciting the 9 & 10 Vict. c. 95, s. 58, and the 12 & 13 Vict. c. 101, provides for the extension of jurisdiction in these terms:—

"That the jurisdiction of the several Courts holden or to be holden under the said act of
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the 10th year of her Majesty shall extend to the recovery of any debt, damage, or demand not exceeding the sum of 50*l.*, and to all actions in respect thereof (save and except the several actions specified in the proviso in section 58 of the same act); and that the several powers and provisions of the said several acts of the 10th and 13th years of her Majesty shall extend to all debts, damages, and demands which may be sued for in the said Courts or any of them not exceeding the sum of 50*l.*, and to all judgments which may be obtained for recovering the same, and to all rules, orders, and regulations which may be made in pursuance of the said acts or either of them, and otherwise in relation thereto respectively, as fully and effectually, to all intents and purposes, as the same powers and provisions are now applicable to debts, damages, and demands within the present jurisdiction of the said Courts."

The 2nd clause proposes to enact, that there shall be payable on any proceeding in the County Courts, "to the Judges, Clerks, and High Bailiffs," where the sum sought to be recovered shall exceed 20*l.*, the fees set down in a schedule annexed, to be paid on or before such proceeding. Upon turning to the schedule referred to by this clause, it will be found that the fees to the officers are framed upon a remarkably liberal scale. For example, the fee to the judge "upon every hearing without a jury" varies from 12*s.* 6*d.* to 37*s.* 6*d.*, and "upon every hearing or trial with a jury," from 1*l.* to 2*l.* 10*s.*; whilst the clerk's fee "upon every hearing, trial, or nonsuit with a jury," varies from 7*s.* to 21*s.*, the increase in all cases being regulated by reference to the amount of the debt or damages claimed. As the bill stands, it is clear, that the officers of the Court would be entitled to pocket those fees, but we can scarcely imagine that this could have been intended by the framers of the bill, as it is proposed by the next clause to increase the salaries of the judges, (which are now fixed at 1,000*l.*

year, and to make a corresponding increase in the clerks' salaries. The clause by which this augmentation of salary is to be effected, is as follows:—

"That there shall be paid to every judge of the Courts holden under the said act of the 10th year of her Majesty (exclusive of his travelling expenses) a salary of such an amount, not being less than £1,200^{l.}, and not greater than £1,500^{l.} per annum, as her Majesty, with the advice of her privy council, shall order, and that the salary to be received by a clerk of the Courts holden as aforesaid (exclusive of all salaries to his clerks employed in the business of the Court, and other incidental and travelling expenses as aforesaid,) shall not exceed the sum of 800^{l.}, &c.

Apart from the consideration of fees and their appropriation under the bill, there is a tolerably solid reason why a portion of the public, at all events, should take a deep interest in the progress of a measure containing such a provision as that cited. A certain addition of 200^{l.} per annum, and a probable addition of 500^{l.}, can scarcely be considered matter of indifference to gentlemen, whose merits had been so long overlooked, as was notoriously the case with a large proportion of those appointed to County Court Judgeships. The anxiety to extend the jurisdiction of the County Courts, no doubt induced the promoters of the bill to forget, that the proposed increase of salaries would exceed in the aggregate the sum paid to the judges of one of the Superior Courts of Law, and thereby materially augment the costs of the administration of justice.

The rigid rule established by the 91st section of the County Courts Act, as to the costs to be allowed to professional men "for appearing or acting," on behalf of suitors in the County Court, is not proposed to be adhered to, but the arrangement substituted is so uncertain and undefined as to afford no security that the profession or the public will be more justly dealt with in this respect, or fare better hereafter than they have hitherto done, in the County Court. The seals officers to be taken by barristers and attorneys is proposed to be provided for in the following summary manner:—

"Whereas it is expedient to alter the same act so far as regards the fees to be taken by barristers and attorneys: Be it therefore enacted, That the Lord Chancellor shall have power and is hereby required to settle and regulate the fees to be taken by barristers-at-law and attorneys practising in the said Courts; and that the judges of the said Courts respectively shall from time to time determine in what cases the expense of employing barristers and

attorneys should be allowed on taxation of costs.

A provision embodying in so few words so much that is objectionable has seldom fallen under our observation. It may be doubted if even an act of parliament can invest the Lord Chancellor with power to fix the fees which a barrister or attorney must take. The horse may be brought to the water, but he cannot be made to drink, and so the professional man may be prohibited from taking a fee beyond a specified amount, but he cannot be compelled to act when he considers the compensation to be received for his services are inadequate. Practically, if the fees are insufficient, they will not be taken by any barrister or attorney whose services are worth paying for. And who so fit to determine upon the amount of the fee as the client, who knows to what extent his interest, his feelings, or his character may be involved in the litigation? The fees to be paid by an unsuccessful party to his adversary rest upon a totally different principle. No one contends that those fees should not be, as they now are in the Superior Courts, regulated, and, so far as practicable, settled beforehand; but nothing can be conceived more objectionable or better calculated to destroy the independence and utility of the profession than to leave it to the discretion of the judge to determine, in the words cited, "in what cases the expense of employing barristers and attorneys should be allowed."

The bill proposes to repeal section 126 of the County Courts Act, giving concurrent jurisdiction to the Superior Courts where the plaintiff dwells more than 20 miles from the defendant, or where the cause of action does not arise wholly within the jurisdiction, or where an officer of the County Court is a party; and also to repeal section 129, depriving the plaintiff suing in the Superior Courts of costs, when the verdict is less than 20^{l.} in actions of contract, and less than 5^{l.} in actions of tort, and to substitute the sweeping enactment which is subjoined:—

"That if in any action commenced after the passing of this act by her Majesty's Superior Courts of Record, in covenant, debt, detinue, or assumpsit, not being an action for breach of promise of marriage, the plaintiff shall recover a sum not exceeding 50^{l.}, or if, in any action commenced after the passing of this act in any of her Majesty's Superior Courts of Record, in trespass, trover, or sale, not being an action for malicious prosecution, or for libel, or for slander, or for criminal conversation, or for seduction, the plaintiff shall

recover a sum not exceeding 20l., the plaintiff shall have judgment to recover such sum only, and no costs, except in the cases hereinafter provided; and it shall not be necessary to enter any suggestion on the record to deprive such plaintiff of costs, nor shall any such plaintiff be entitled to costs, by reason of any privilege as attorney or officer of such Court, or otherwise."

The cases referred to, in this clause, as "hereinafter provided," and where the plaintiff trying in the Superior Courts is to be entitled to costs, are:—Where a judge at the trial certifies that the action was brought for a cause for which no plaint could have been entered in a County Court, or where an officer of the Court was a party; or that the cause was removed from a County Court by certiorari, and a judge at chambers directs that the plaintiff shall recover his costs.

The bill contemplates a material enlargement of the limits of local jurisdiction as regards plaintiffs, by enacting (clause 4.) that the issuing of the summons is not to be confined to the districts in which the defendant, or one of the defendants, dwell or carried on business within six calendar months, as provided by the 9 & 10 Vict. c. 95, s. 60, but that the summons may issue in any district in which the plaintiff may reside or carry on business for six months next before action brought by leave of the Court. Under this regulation, as we understand it, a party residing in Cornwall may be summoned before the judge of the County Court of Kent, or of Durham, and upon non-appearance, subjected to a judgment by default.

The only remaining clause of Mr. Fitzroy's bill, to which we deem it necessary to direct attention, is that which professes to confer on the parties to a suit in the County Court the power of appeal, where the sum sought to be recovered exceeds 20l. We transcribe the clause without abbreviation:

"That where either party to any action or suit which shall have been heard and determined in any Court holden under the said act of the tenth year of her Majesty, and in which the sum sought to be recovered shall exceed 20l., shall be dissatisfied with the judgment or order of the said Court, and shall give a written notice to the clerk of the Court at his office, and to the other party by serving the same personally on such other party, or leaving the same at his usual place of abode within three days after such judgment or order shall have been made, that he is desirous to appeal against the same to one of her Majesty's Superior Courts of Common Law at Westminster, and shall in such notice set forth the grounds of such appeal, and shall pay into Court the amount of

the debt or damage and costs recovered in such action or suit, to abide the event of an appeal, and if the judge of the said Court in which the trial or hearing shall have been had, upon application to the Court by the party by whom such notice had been given, at the sitting next after such notice shall not have sufficient cause shown by the other party against such appeal, or shall think it reasonable and proper that such appeal should be entertained, and the party so applying shall become bound, with two sufficient sureties, to be approved by the clerk of the Court, in such a sum as to the judge of the same Court shall seem reasonable, to prosecute such appeal with effect and without delay, and to pay all the costs of the proceedings on such appeal, in case the judgment or order appealed against shall not be reversed, or the appellant shall discontinue or not prosecute his appeal, such judge shall, by order, allow such appeal; and where any such appeal is allowed the judge (where the case shall require) shall, in the order allowing such appeal, set forth the facts which, according to his judgment, have been established by the evidence in the case, and which shall be material to the matter in question."

A privilege surrounded with so many restrictions, and which must be withheld so dearly purchased, had much better have been withheld. Not to dwell upon the absurdity of enacting that either party (i. e. plaintiff or defendant) dissatisfied with a judgment "shall pay into Court the amount of the debt or damage and costs recovered," how unnecessary it is to compel a party paying the amount recovered into Court, with costs, also to find sureties to prosecute his appeal? What a mockery upon the rights of appeal when it is to depend upon the opinion of a judge, whose decision is appealed from—and who is at once the judge of law and fact—whether the appeal is reasonable and proper to be entertained? Supposing, however, that all the difficulties are overcome, and that a County Court judge thinks an appeal against his own judgment reasonable and proper, and in the order allowing such appeal sets forth the facts material to the matter in question, how is the matter in question to be brought before the Superior Court? Is it to be a rehearing of facts, or is it to be confined to some question of law? Is it to be brought before the Superior Court by motion founded on affidavit, special case, or writ of error? Upon these matters the bill before us contains no provision. Well was it remarked by Lord Brougham, on a late occasion in the House of Lords, that however other manufactures had improved in this country of late years, as much could not be said of the manufacture of acts of parliament!

THE LORD CHIEF JUSTICE OF THE QUEEN'S BENCH.

THE remarks under this head in our last number, though written before, were published contemporaneously with an announcement by Lord John Russell, as the head of the government, that he proposed to bring in a bill to regulate the salaries of the Chief Justices of the Queen's Bench and Common Pleas. To the fact already mentioned and animadverted upon—that Lord Denman, although entitled by the express provisions of an act of parliament to a salary of 10,000*l.*, had for 18 years consented to receive that sum minus 2,000*l.*,—was added, that Lord Campbell had accepted the office with an intimation and understanding that a bill would immediately be introduced to reduce the salary to 8,000*l.* The bill has since been laid before parliament, and no doubt will meet unanimous approval. By the adoption of this course of proceeding, the present government and Lord Chief Justice have manifested a commendable regard for the public interest, and at the same time avoided the mistake into which their predecessors somewhat wantonly fell, of sanctioning an arrangement now admitted to have been illegal. Why the only legal and constitutional course was departed from upon Lord Denman's appointment, we are unable to suggest. At all events, it is to be hoped that so vicious a precedent will not be repeated. The salaries of the Judges of the Superior Courts should in no sense be suffered to become matter of traffic or arrangement; and neither be increased nor diminished without the express sanction of parliament.

The bill now before the house of Commons contains a provision reducing the salary of the Chief Justice of the Court of Common Pleas from 8,000*l.* per annum, at which it was fixed by the 6 Geo. 4, c. 83, s. 8, to 7,000*l.*, but the operation of this clause is, of course, only prospective, and does not affect the salary heretofore received by the learned judge who at present presides over that Court and devotes himself with such unwearied assiduity to the discharge of his judicial duties.

CHANCERY REFORM.

DIMINUTION OF EXPENSE AND DELAY.

AN opinion is gaining ground amongst the practitioners in chancery, that very extensive alterations, both in the jurisdiction of

the Court and the mode of procedure, must ere long take place. In another part of this number, we have set forth the enormous amounts paid out of the Suitors' Fund and the Suitors' Fee Fund, in payment of the salaries of the judges and officers, extracted from the pockets of the suitors instead of the general funds of the state.

There appears, however, to be a large surplus of receipt over expenditure, and the new order, given in our last number, will show that the Lord Chancellor has made some reduction in the fees for entering causes, but much more remains to be done. We trust, when his lordship's attention is directed to the state of the account, he will effect further reductions. But the important object to be attained in our Courts of Equity is, the removal of the salaries of the judges, if not of the officers, from the shoulders of the suitors.

It is apprehended, however, that the diminution of the Court and office fees will not alone be sufficient to satisfy the demands of the public, and particularly of that large class of suitors to the Court whose litigated claims are of small amount. It must indeed be admitted, that, if it was right to create sixty new tribunals, perambulating all parts of the country, to administer justice in actions at law not exceeding 20*l.*, the claims in equity to a corresponding amount should be capable of prosecution at an expense less burdensome than the large amount usually incurred in a regular suit by bill and answer, hearing, reference, further directions, &c., &c.

Now, there are two bills before parliament for the redress of the grievances in question: the one, brought in by the Solicitor-General, relating to the Court of Chancery in Ireland, and the other, by Lord Brougham, for extending the jurisdiction of the Masters in Chancery in England. We believe that the last bill is the suggestion of the Metropolitan and Provincial Law Association, and the other bill also appears to be mainly founded on the recommendations of the same society, though the Law Amendment Society may probably claim an earlier copyright in these projects. We stated the substance of the proposed change in the Master's jurisdiction in our last number, page 359. The means of effecting a large saving of time and expense are:—

1st. By conferring an original jurisdiction on the Masters in the following suits and matters:—

The Administration of the Estates of a deceased person; the Administration of

Trusts; the appointment of Guardians; the Allowance of Maintenance to Infants; and in such other cases as the Lord Chancellor may by any general or special order direct.

2nd. By abridging the course of proceeding in the Masters' Offices, and making the Masters' decisions operative without confirmation by the Court. The Master in fact will have power to begin and end a suit like a County Court Judge, unless an appeal be made to the Court within a limited time.

An objection is made by Mr. Purton Cooper, in his recent Letter to the Solicitor-General on the Irish Chancery Bill, that the proceeding in a summary way by *petition* is inapplicable to certain cases. In the bill brought in by Lord Brougham, it is not proposed to incur the expense even of a petition to the Court, but to enable the suitor to go at once to the Master,—empowering however the Court to direct a suit to be instituted in lieu of proceeding summarily before the Master; but the costs of all parties occasioned by such suit or other proceeding before the Court, are to be borne by the applicant, unless otherwise specially decided by the Court.

There are various other important provisions in the bill, to which we shall have occasion to advert during its progress. The immediate questions to be considered by both branches of the profession are,—whether they will support adequate measures for removing the complaints of unnecessary delay and expense, and whether the plans now under consideration are the best adapted to effect the object?

Connected with these two bills, which directly bear upon the proceedings in Chancery, there is another—that relating to Charitable Trusts, which should at the same time be taken into consideration. By the latter bill, it will be recollected, that it is proposed to give Jurisdiction to County Court Judges in Charities not exceeding 30*l.* annually, and in cases from 30*l.* to 100*l.*, to enable the Masters in Chancery to proceed in a summary manner upon a petition and conferring on their decisions the force of Orders of Court, *subject to an appeal*.

In favour of these measures it is contended, that a multitude of cases will be brought before the Master or the County Court, which at present are never heard of on account of the heavy costs of the present mode of proceeding; and that thus the evil of a denial of justice will be removed. It is urged, that whilst the client

will be able to obtain redress at a comparatively moderate expense, the interests of the solicitor will be promoted. In some hitherto long and costly suits the amount of his charges may be less, but there will be a speedier result and an earlier payment; whilst in the smaller cases, the emoluments will be so much entire gain, because at present those cases rarely, if ever, find their way into Court.

The profession is thus called upon to lose no time in considering the course they should pursue; and we need not say that we shall be ready to assist, in any way in our power, in the discussion and early determination of the questions at issue.

REAL PROPERTY CONVEYANCING BILL.

SHORT FORMS OF DEEDS, WILLS, &c.

THIS bill, which was brought in by Mr. Headlam and Mr. Wood, proposes to "Amend and extend certain of the provisions of an Act of the Eighth and Ninth Years of her present Majesty, for facilitating the Conveyance of Real Property." It recites, that by the 8 & 9 Vict. c. 119, intituled "An Act to facilitate the Conveyance of Real Property," it was among other things enacted, that in taxing any bill of costs for preparing and executing any deed under the said act, the taxing officer should, in estimating the sum proper to be charged, consider, not the length thereof, but only the skill and labour employed and responsibility incurred in the preparation thereof: and reciting that it is expedient to extend the same provision to the case of all deeds, wills, and instruments: it is therefore proposed to be enacted, that in taxing any bill of costs for preparing or executing, or preparing and executing any deed, will, or other instrument in writing, it shall be lawful for the taxing officer, and he is hereby required, in estimating the proper sum to be charged for such transaction, to consider, *not the length of such deed, will or other instrument, but only the skill and labour employed and the responsibility incurred in the preparation thereof.*

The proposed act is not to extend to Scotland.

Our reasons against this bill were given last session, and remain in full force. We are persuaded that the measure will work injustice both to the client and the solicitor, and the enactment will be easily evaded by the unscrupulous practitioner.

TAXES UPON JUSTICE	
Pension to a Retired Master's Clerk of 666 <i>l</i> . 1 <i>s</i> . 4 <i>d</i> . per annum	666 2
Accountant-General's salary	573 15
Expenses of office, office-keeper, rates, stationery, &c.	436 17
Twenty-six Clerks' salaries	6,705 12
Pension to a retired Clerk of 450 <i>l</i> . per annum	450 0
Two Examiners' salaries (in part), remainder being charged on the Suitsors' Fee Fund	582 10
Retired Examiner's Pension	194 3
Retired Examiner's Clerk's Pension	291 5
Three Clerks in the Clerk of Entries' office	77 13
Officers of the Lord Chancellor's Court	291 5
Usher	194 3
Court-keeper	115 12
Persons to keep order	666 8
Thief-staff	485 6
Sergeant-at-Arms	97 1
Officers of the Vice-Chancellor of England:	
Secretary	194 3
Usher	97 1
Trainbearer	77 13
Officers of the Vice-Chancellor Bruce:	
Secretary	194 3
Usher	97 1
Trainbearer	77 13
Court-keepers	115 12
Officers of the Vice-Chancellor Wigram:	
Secretary	194 3
Usher	97 1
Trainbearer	77 13
Court-keepers	115 12
Surveyor	5,004 5
Compensation to late Officers of the Court of Exchequer	600 0
Solicitors to the Suitsors, in lieu of Costs	1,500 0
Disbursements	2,459 5
Expenses of Courts, Registrars' offices, Masters' offices, Report and other offices, for repairs, rates, stationery, costs, candles, servants' wages, &c.	267,500 9
Total Payments	30,000 0
Surplus Interest invested	21,733 4
Balance on the Account, 1st October, 1849	£120,288 15

SALARIES AND COMPENSATIONS PAID OUT OF SUITORS' FEE FUND.

Compensation to three Masters, at 750 <i>l</i> . per annum, with proportion to one since resigned	2,872 8 4
Ten Masters' Chief Clerks' salaries, at 1,000 <i>l</i> . per annum each	10,000 0 0
Ten Masters' Junior Clerks' salaries, at 150 <i>l</i> . per annum each	1,500 0 0
Salaries to Ten Registrars	1,500 0 0
Compensation to ditto, under s. & 4 Wm. 4, c. 94, s. 48, and 5 Vict. c. 3, s. 63	2,000 0 0
Salaries to fourteen Registrars' Clerks	2,000 0 0

	£	s.	d.
Pension to a Retired Registrar, under 3 & 4 Wm. 4, c. 94, s. 48	273	0	0
Salary to Master of Reports and Entries	1,000	0	0
Ditto to two Clerks of Entries	250	0	0
Salaries to Clerks of Accounts	2,500	0	0
Pension to late Master of Reports	2,250	0	0
Compensation to one Clerk of Entries	100	0	0
Part of Examiners' salaries to two Examiners, at 700l. per annum	1,400	0	0
Compensation to one Examiner, under 3 & 4 Wm. 4, c. 94	300	0	0
Salaries to Examiners' Two Clerks, at 150l. per annum	300	0	0
Compensation to one ditto	200	0	0
Salaries to two Clerks of Affidavits, with proportion to one ceased, under 10 & 11 Vict. c. 97	1,871	3	11
Salaries, &c., under 5 & 6 Vict. c. 84:			
Two Masters in Lunacy	4,000	0	0
Travelling expenses	599	17	0
Salaries to seven Clerks to Masters in Lunacy	2,020	0	0
Rent of Premises	330	0	0
Expenses of Office	772	8	4
Salary of Secretary of Lunatics	800	0	0
Salaries to four Clerks in Secretary's Office	710	0	0
Expenses of offices	422	5	7
Compensation to late Commissioners in Lunacy	480	0	0
Ditto to late Clerk of the Custodies	236	0	0
Salaries, &c., under 5 & 6 Vict. c. 103:			
Six Taxing Masters	12,000	0	0
Six Clerks to ditto	1,500	0	0
Clerk of Enrolments	1,200	0	0
Three Clerks to ditto	750	0	0
Four Clerks of Records and Writs	4,800	0	0
Twelve Clerks to ditto	3,000	0	0
Copy Money for writing and copying in the offices of the Taxing Masters, Clerk of Enrolments, Clerks of Records, and Writs and Affidavit Office*	9,098	17	8
Rent of Taxing Masters' Offices	800	0	0
Expenses of Taxing Masters, Enrolment, and Record and Writ Clerks and Affidavit Office, for stationery, coals, candles, servants' wages, rates and taxes, and for furniture, &c.	1,511	15	2
Salaries to two Clerks of the Petty Bag Office, under 12 & 13 Vict. c. 110	562	10	0
Compensation for loss of Office and Profits to the undermentioned Officers, under 5 & 6 Vict. c. 103:			
Three Six Clerks	4,733	15	0
Twenty-two Sworn Clerks	29,806	2	6
One Waiting Clerk	109	8	8
Four Agents to Sworn Clerks	1,116	4	8
Two Clerks of Enrolments	822	10	0
Two Deputy Clerks of Enrolments, Deputy Record Keeper, and Agent to Sworn Clerk	2,285	8	4
Bag Bearer	42	16	0
Chaff Wax	19	16	8
Sealer	17	14	0
Seven Masters' Junior Clerks under the 5 & 6 Vict. c. 84, and 5 & 6 Vict. c. 103	961	6	5
Messenger	12	12	0
Excess of Fees above charges for the year ending 25th Nov. 1849.	13,154	15	3

£150,042 15 6

* £917 2s. 4d., part of this sum, was not, in fact, due before the 7th December, 1849, but is necessarily included in this Account as chargeable upon the other side of the Account.

FEES RECEIVED.

The following are the Fees received in the several Offices, from the 25th November 1848, to the 24th November, 1849.

In the Masters' Office	40,605	3	9
In the Registrars' Office	18,791	6	6

x 5

	£	s.	d.
In the Report Office	3,772	8	0
In the Affidavit Office	10,647	7	11
In the Examiners' Office	1,633	18	4
In the Subpoena Office	158	8	0
Fees formerly payable to the Lord Chancellor	1,285	10	8
Fees received by the Lord Chancellor's Secretary, and paid into Court by order of the Lord Chancellor	3,488	7	4
Fees received by Secretary of Lunatics	3,107	12	10
" " Clerk to Masters in Lunacy	3,306	17	2
" " Taxing Masters	31,730	4	9
" " Clerk of Enrolments	6,725	8	9
" " Record and Writ Clerks	24,336	14	10
Master of Reports and Entries by Order of Court	504	2	8
A Suitor by Order of Court	5	0	0
Investment Money brought over from the Account of Sale of Six Clerks' Office	44	4	0
	£150,142	15	6

THE ANNUAL CERTIFICATE TAX.

THE adjournment of the debate on the Annual Certificate Tax from the 26th Feb. until after the Financial statement shall be made by the Chancellor of the Exchequer, afforded an opportunity of applying to the Government for an audience on the subject. It will be recollected that Mr. Cockburn, who usually votes with the administration, (whilst concurring in the adjournment of the motion,) urged upon the government "in the interval to take the matter into their serious consideration, for the tax was one of the most unjust and oppressive at present existing."

Accordingly, Lord R. Grosvenor was waited upon by some of the Council of the Incorporated Law Society, and his lordship on their suggestion immediately applied to Lord John Russell to receive a deputation on the subject. Monday last, the 11th instant, was appointed to attend the Premier at his official residence. It was not considered desirable to form a numerous deputation of members of parliament, and therefore it consisted of Lord R. Grosvenor, M. P. for Middlesex, Mr. Hamilton, M. P. for the University of Dublin, Mr. Sadleir, M. P. for Carlisle, and Mr. Smollett, M. P. for Dumbartonshire, accompanied by Mr. Clarke, the President of the Incorporated Law Society, Mr. Harrison, the Vice-President, Mr. Wing and Mr. Barnes, Members of the Council, and Mr. Maugham, the Secretary of the Society.

We are informed that the statements of the deputation were heard by Lord John Russell with marked attention; his lordship inquired whether any similar stamp duties were paid by barristers, and, having received the papers handed in by the depu-

tation, said he would consider the subject with the Chancellor of the Exchequer, prior to the financial statement to be made on Friday.

Our readers will be in possession of that statement at the time these pages are laid before them, and, of course, we cannot anticipate what may be the determination of the Ministry. If they should afford some immediate relief from the burthen, or distinctly admit the justice of the claim, and promise redress in the next session, the profession will probably give their assent; but if nothing be satisfactorily said or done, we presume, the most strenuous exertions will be made to carry the measure. It is possible that the government may not think proper voluntarily to select this tax for remission, but leave the house to determine for itself (as an open question) which of the claimants for a share in the surplus should, as Mr. Hayter expressed it, "make out the best case for relief." Before our next publication, we shall, of course, be in possession of the decision of the government, and probably shall also be able to state the course of proceeding which it may be expedient for the profession to adopt. We hear from all quarters that the members on both sides of the house admit the justice of the claim, and the only doubt with some of them is, whether the amount in question can at present be spared from the public revenue. The notion that the tax contributes to promote the respectability of the practitioners seems now abandoned altogether.

The meritorious object of improving the profession may, and ought to be, attained by other means than by this annual poll-tax. It is indeed monstrous to suppose that all men of small practice can alone be

kept in the path of honour by the Certificate Duty, and that if it were abolished, those gentlemen would act dishonourably; or that those who are now by the barrier of the tax prevented from practising would misconduct themselves if the tax were removed. We have some means of forming a judgment on this matter, and feel assured that the abolition of the tax would really contribute to the respectability of the profession, because it would annihilate the practice of various persons acting under one certificate, over whom, for the most part, the Court has no power of punishment for improper conduct.

NOTICES OF NEW BOOKS.

The Magisterial Formulist: being a complete collection of Forms and Precedents for Practical use in all matters out of Quarter Sessions; adapted to the Outlines of Forms in Jervis's Acts (11 & 12 Vict. cc. 42, 43). With an Introduction, Explanatory Directions, Variations and Notes, (brought down to 12 & 13 Vict.) By GEORGE C. OKE, Author of "The Magisterial Synopsis." London: Henry Butterworth, 7, Fleet Street. 1850. Pp. 543.

MR. OKE is favourably known to the profession as the author of "The Magisterial Synopsis," comprising summary convictions, indictable offences, and proceedings before justices out of sessions. The present publication is designed as a companion to the former work, and both of them are adapted to the Administration of Justice Acts, 11 & 12 Vict. cc. 42, 43.

A collection of forms and precedents for practical use under these important acts was obviously required by the practitioner, and Mr. Oke has, we believe, ably and accurately supplied the want. The utility of the present publication will be apparent from the following considerations:—

"1. That the uniformity in the present Practice requires uniformity and consolidation in the Forms of Proceedings.

"2. That the majority of the Forms in the Books of Practice, published previous to the passing of Jervis's Acts, being so dissimilar in their features and construction, are not now to be depended upon, and that none, unless in the same features as those Acts, should be used.

"3. That the Forms given in the old Works are so mixed up with the repealed Law and Practice as to be useless.

"4. That the Books alluded to are necessarily deficient in the quantity and variety of

Forms required for use, especially in the Statements of Offences (Summary and Indictable), and Special Sessions Matters.

"5. That such a Collection should be in a distinct volume from the Practice, as most convenient for daily use, and therefore might be used as a companion to 'The Magisterial Synopsis,' or with any other Book of Practice on the subject.

"6. That by having the General Blank Forms or Outlines in Jervis's Acts printed with proper spaces for variations to suit particular exigencies, the requirements of Statutes, and the local additions, and marks to distinguish one class of Forms from another, Magistrates and Magistrates' Clerks will be enabled so to vary such General Forms according to the direction to be given in such Collection as to suit the circumstances of almost every case, without having recourse to the expensive mode of purchasing printed Special Blank Forms under each title or for each subject.

VESTRY AND VESTRY CLERKS' BILL.

THIS bill, which was brought in by Mr. Wood and Mr. Wilson Patten on the 7th instant, contains a most objectionable clause, the 10th, in effect repealing part of the Attorneys' Act, 6 & 7 Vict. c. 73, and enabling vestry clerks, or other officers, though not attorneys, to conduct proceedings before Petty and Special Sessions or out of Sessions. The Vestry Clerks' Society will, of course, give their attention to the subject, and, no doubt, the several Law Societies will assist them in opposing or amending the clause.

The section referred to is as follows:—

"That, notwithstanding anything contained in an act passed in the seventh year of the reign of her Majesty, intituled 'An Act for consolidating and amending several of the Laws relating to Attorneys and Solicitors practising in England and Wales,' it shall be lawful for any vestry clerk or other officer constituted under this act, if duly authorized by the churchwardens of the parish, or, where there are no churchwardens, by the overseers thereof, to make or resist any application, claim, or complaint, or to take and conduct proceedings before any justice or justices of the peace at Petty or Special Sessions or out of Sessions, although such vestry clerk be not an attorney or solicitor, or have not obtained a stamped certificate in pursuance of the provisions of the said act relating to solicitors."

ATTORNEYS TO BE ADMITTED
 1850.
 Robert, Southampton-buildings; J. Feinson,
 Clarendon-road; and Graham, 2, Camden-terrace,
 Downing Samuel Theo. Green, 25, Acton-street,
 Green, George, William Cumming, 1, Philadelphia
 place, Hackney-road; Henry Argue, 10, Baker-street, London
 Dene, Henry Argue, 10, Baker-street, London

Clerks Names and Residences.

Allway, Samuel Plomer, 13, Millbank-row
 Allen, Thomas, 38, Edward-street, Hampstead-road
 Ashwin, Thomas, 13, White-church-lane
 Gray's-inn-road; and South-end-upon-Avon
 Asprey, Joseph Cox, 8, Featherstone-buildings,
 Holborn
 Ashhurst, Robert, Penwortham
 Batchelor, George, 16, Harpur-street; and Carlen
 Beardsall, Thomas, 1, White-church-lane
 Baynam, Walter Lewis, 52, Frederick-street; and
 Gough-street, North-Grays-inn-road
 Buckton, James Edmund, 10, Mark-rose-street, Lis-
 lington; Wrexham; and Wharton-street
 Baddeley, Henry John, 22, White-church-lane
 George's-inn-road
 Bishop, Richd. Elias, 85, Stanhope-street, Hamp-
 stead-road; and Ashurst, Robert, Penwortham
 Bouskell, James, jun., 16, Soley-terrace; Lancas-
 ter; Southampton-buildings; and New-square
 Barham, Eustace, Westbury-upon-Trym
 Beecham, W. Pain, jun., 30, New North-street,
 Red-lion-square; Hawkhurst; and Frederick-
 street
 Brydges, Edward Thomas, Cheltenham; Found-
 ling-terrace
 Butlin, Thomas, 24, Acton-place, Kingsland-road;
 Nottingham; Sidmouth-street, Church-road;
 and Lee-street
 Bennett, John William, 10, Clements-place, Ros-
 ton-village
 Broster, Thomas, jun., Keighley and Skipton-streets,
 Craven
 Burn, William, 4, Foxley-road, North Brixton
 Burnham, George Hudson, 16, Manchester-street,
 Gray's-inn-road; Wellingborough; and Mel-
 ford-square
 Brown, Thomas Phillpotts, 7, Golden-square; and
 Gloucester
 Brierley, George, 9, Brunswick-street, Islington;
 Wakefield; and Norfolk-street
 Cartwright, John Hurry Hawkeley, Thorne, York;
 and North Shields
 Coad, John Luskey, 32, Wharton-street, Llyd-
 square; and Liskeard
 Cooper, John, 2, Thurlow-place, Hackney-road;
 and Manchester
 Croxley, Alexander, The Grove, Chamberwell
 Cartwright, Thomas Broadbent, 13, Great Marl-
 borough-street
 Craven, John, jun., 4, Thornhill-bridge-place,
 Pantonville; and Albert Terrace, Baywater
 Calthrop, Thomas Donnie, Morden College, Black-
 heath
 Cooke, Joseph Percy, 80, Albert-street, Morning-
 ton-crescent; and Clifton
 Clarke, Thomas, Uffculme; and Chester-terrace,
 Eaton-square
 Cook, Thomas, 2, Leigh-street, Burton-crescent
 Cullen, Fabian Court, Canterbury
 Carlisle, William Thomas, 62, Church-road, Hack-
 ney
 Davies, Henry, Oswestry
 Duke, Richard, Liverpool
 Henry Johnson, Red-lion-square, William
 Clements-place
 James C. Laycock, Huddersfield
 Robert H. Hobbes, Stratford-upon-Avon
 Frederick Aggrey, Furnival's-inn
 Lane, Avelin-street
 George Noble, Peaston
 Charles Krolberg, Newport
 Horatio Barnett, Walsall
 Edmund Singer, Burghley
 James Buckton, Wrexham
 Joseph A. Milne, London-street, Falmouth
 Robert Tucker, Ashburton
 Thomas Swainson, Lancaster
 John H. B. Carlake, Bridgewater, and Alfred
 Henderson, Bristol
 W. P. Bamham, sen., Hawkhurst
 Dennis Treufield, Winchcomb; O. Williams,
 Cheltenham
 George Edgworth, Nottingham
 E. W. Violett, Banwell
 Thomas Broster, sen., Wrexham John F. B. Ray,
 Bathing-house, 10, Broad-street, London
 Adam Burn, Great Carter-lane
 George Burgess, Wellingborough
 William Viner Ellis, Gloucester
 William Stewart, Wakefield, Thomas Lee, Wake-
 field
 Frederick H. Cartwright, Bakery, Thomas Carr
 Leach, North Shields; William Thorpe, Thorne
 Edward Lyne, Liskeard; John S. Greaves, Bed-
 ford-row
 Charles Cooper, Manchester
 James Phillips, Lawsons Court, Lawley
 Edward White, Great Marlborough-street
 William Craven, Halifax
 John Smith Hymer, Whitehall-place
 Isaac Allan Cooke, Bristol
 Richard Rowman, Uffculme
 John Colp, Adelphi-terrace, Strand
 Stephen Plummer, Canterbury
 John Burley, Lincoln
 John Hayward, Oswestry
 John Robinson, Liverpool

EQUITY AND LAW LIFE ASSURANCE SOCIETY.

The Annual General Meeting of this Society was held at their offices, No. 26, Lincoln's Inn Fields, on Monday, the 25th ult. *Francis Newman Rogers, Esq., Q. C.*, in the chair.

The Chairman congratulated the meeting on the progressive increase of the Society's business, and also on the fact that the Policies issued in 1849, exceeded in number those of any previous year. It appeared from the Chairman's address, and from the report of the Directors, subsequently read, that, during 1849, a sum of 3,505*l.* 3*s.* 8*d.* had been received for Premiums on new Policies, representing a gross amount assured of 125,483*l.*, the average rate of premium being only 2*l.* 15*s.* 11*d.* per cent.

The business of the Society was stated to have been progressively increasing from its commencement in 1845, and the total annual income to be now upwards of 17,500*l.*

The Balance Sheet showed, that after paying all preliminary and working expenses, and interest at the rate of 3 per cent. on the deposits on shares, a sum of 27,352*l.* 10*s.* 7*d.* had been added to the Capital Stock of the Society, which sum, subject to claims amounting to

about 3,000*l.*, and such deduction as might be considered necessary to meet existing liabilities, was now divisible amongst the assured and the shareholders.

NOTES OF THE WEEK.**ATTORNEYS' ANNUAL CERTIFICATE DUTY.**

The 22nd March, to which the debate on the Certificate Duty was adjourned, having been since appropriated by the government to another subject, Lord Robert Grosvenor has given notice of motion "on going into Committee of Supply, after Easter, that the adjourned debate upon the repeal of the Attorney's Annual Certificate Duty be resumed."

PLEADING AND PRACTICE IN THE SUPERIOR COURTS.

Mr. Cockburn has given notice of a motion after Easter for a "Select Committee to inquire into the state of the Law as regards Pleading and Practice in Civil Actions in the Superior Courts of England and Wales, and to report whether any and what amendments may be made therein." This is a proper inquiry to precede any extension of the County Courts' jurisdiction.

RECENT DECISIONS IN THE SUPERIOR COURTS.**AND SHORT NOTES OF CASES.****Lord Chancellor.**

Bagshawe v. Eastern Union Railway Company.
Feb. 1, 5, 9, 1850.

RAILWAY COMPANY.—MONEYS RAISED FOR SPECIFIC PURPOSE.—INJUNCTION.

An injunction was granted to restrain a railway company from applying any part of the moneys raised for forming a railway from Hadleigh to Harwich to the completion of the line to Norwich.

This was an appeal from the Vice-Chancellor Wigram, overruling the demurrer to a bill filed by the plaintiff, as proprietor of scrip certificates for perpetual 6 per cent. stock in the above railway company, on behalf of himself and the proprietors of such stock other than the defendants, the directors. The company was incorporated in 1844, by the 7 & 8 Vict. c. lxxxv., and was empowered to make a railway from Colchester to Ipswich, and by the 10 & 11 Vict. c. xix., they were authorised to create an additional number of shares and to borrow 100,000*l.* to complete the Hadleigh Junction Railway, and by the 10 & 11 Vict. c. ccxxv., to make a railway from the Eastern Union Railway at Manningtree to Harwich, with branches, and for which purpose 200,000*l.* was to be raised, which was to be considered as part of the general capital of the company. A resolution was accordingly made at a meeting of the directors and shareholders in Aug. 1847, to raise these sums before January, 1849,

by the issue of scrip certificates, which would entitle the holder to become a registered shareholder in a guaranteed stock, on which a dividend of 6 per cent. would be paid with an option of converting the same into the company's general stock. The plaintiff purchased two certificates, and having paid up his liabilities thereon, received a promise from the company's secretary that he should be duly registered. The plaintiff, however, was, in December, 1848, informed that the Harwich branch was to be postponed until the completion of the Norwich branch, filed this bill, praying that the resolution of August, 1847, might be declared binding on the company, that an account might be taken of the sums raised under the 10 & 11 Vict. c. xix., and 10 & 11 Vict. c. ccxxv., and for a declaration that the application of any part of those sums otherwise than under the acts was a breach of trust, and for an injunction. The defendants demurred for want of equity, want of title, and non-joinder of the assignor of the certificates. The Vice-Chancellor having overruled the demurrers, this appeal was presented.

Wood and Daniel, in support of the appeal, cited *Poss v. Harbottle*, 2 Hare, 416; *Lord v. Copperminers' Company*, 2 Hill, 470; *Mozley v. Alston*, 1 Phill. 790.

The *Solicitor-General* and *Grove* contra.

The *Lord Chancellor* said, the plaintiff was not merely a member of the company, but also a holder of scrip and of stock, and it was not

necessary to make the vendor of the shares a party, who was discharged from all liability from the date of registration, and he was therefore entitled to relief. The sums raised under the acts of 10 & 11 Vict. were to have a preference over the other capital of the company, and were raised for the Hadleigh and Harwich branches, and the Court would restrain the misapplication of those moneys to the construction of the Norwich branch: *Cohen v. Wilkinson*, 38 L. O. 166; 39 L. O. 65. The appeal would therefore be dismissed with costs.

Ex parte Young, in re Bishop. Feb. 12, 1850.

BANKRUPTCY.—SEALING PROCEEDINGS.—VALIDITY OF FIAT.—ISSUE AT LAW.

An order was made on the Secretary of Bankrupts to seal certain proceedings anterior to October 11, when the 12 & 13 Vict. c. 106, came into operation, but refused as to subsequent proceedings.

THIS was an application for an order on the Secretary of Bankrupts to seal certain proceedings for the purpose of proceeding with the trial as to the validity of the fiat according to the 12 & 13 Vict. c. 106, s. 236.

Bagshawe, in support, said, that under the 4th section, all proceedings in bankruptcy depending at the commencement of the act were to be brought to a conclusion under its provisions.

The Lord Chancellor made the order as to proceedings which had taken place before the 11th October, when the 12 & 13 Vict. c. 106, came into operation, but refused it as to any subsequent proceedings.

March 7, 8.—*Weaver v. Grant*—Cur. ad. vult.

—8.—*In re Vale of Neath Brewery Company, ex parte White*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

—8.—*In re Vale of Neath Brewery Company, ex parte Walters*—Appeal dismissed from Vice-Chancellor Knight Bruce.

—9.—*Evans v. Prothero*—Cur. ad. vult.

—9.—*Bristol v. Needham*—Order to suspend operation of order for payment of costs until Master reviewed his report—the costs depending thereon.

Master of the Rolls.

Hodgson v. E. Powis and others. Feb. 23, 1850.

RAILWAY COMPANY.—CONSTRUCTION OF PART ONLY OF LINE.—INJUNCTION.

An injunction was granted to restrain a company from applying part of certain preference shares towards completing a railway otherwise than with a view of constructing the whole line authorized under the company's act of parliament.

R. Palmer and Westoby appeared in support of a motion for an injunction to restrain the Shropshire Union Railway and Canal Com-

pany, and the defendants, the directors thereof, from applying the funds received from the holders of new 20l. shares in making part only of the lines of railway which they were empowered under their act of 1846 to make; and from making any further calls on such shares or enforcing payment thereof.

Turner, Willcock and Speed contra.

The Master of the Rolls granted the injunction to restrain the making of part of the railway only, but refused so much as sought to restrain the enforcement of calls by proceedings at law or forfeiture, and directed the rest to stand over to file affidavits.

March 6.—*Wilson v. Elen and others*—Judgment of the Court of Queen's Bench on case directed, confirmed.

—7.—*In re Sudlow and another*—Cur. ad. vult.

—8.—*Salomons v. Laing*—Demurrer overruled.

—4.—*Attorney-General v. Dalton*—Stand over to 18th March.

—11.—*In re Cobbett*—Motion refused to quash return to writ of *habeas corpus* and to discharge prisoner out of custody.

—8, 9, 11, 12.—*Ord v. Parkis*—Injunction continued.

—12.—*Rowley v. Adams*—Cur. ad. vult.

—12.—*Howard v. Prince*—Part heard.

Vice-Chancellor of England.

Birkenhead, Lancashire, and Cheshire Junction Railway Company v. Ravenscroft and others. Feb. 19, 1850.

RAILWAY CLAUSES AND LANDS' CLAUSES ACTS.—ASSESSING COMPENSATION.—ALLEGED INJURY BY RAILWAY.

An injunction was granted *ex parte* to restrain the defendants from proceeding under the 8 Vict. c. 16, s. 6, and 8 Vict. c. 18, s. 68, where they had not shown that their premises had sustained any positive injury from the railway, but merely were "injuriously affected."

THIS was a motion *ex parte*, to restrain the owners of certain lands at Birkenhead from taking proceedings under the 8 Vict. c. 16, s. 6, and 8 Vict. c. 18, s. 68, to compel the plaintiffs to empanel a jury for the purpose of awarding compensation for their property having been "injuriously affected" by the railway.

Glasse, in support, contended that some positive damage should have been proved: citing *London and North Western Rail. Co. v. Smith*, (Lord Chancellor,) 38 L. O. 66; 1 M'N. & G. 216; *East and West India Dock and Birmingham Junction Railway Company v. Paterson*, (V. C. Wigram, Dec. 19, 1849.)

The Vice-Chancellor granted the injunction.

March 6.—*Trant v. Deffell*—Judgment on construction of will.

—7.—*In re Port of Wisbeach Railway Company*—Order for commitment under 11 & 12

VICT. c. 45, s. 62, for non-attendance before the Master in obedience to subpoena.

March 8.—*In re Allen*.—Order on petition for maintenance of infant.

— 7, 8, 9.—*Shrewsbury and Birmingham Railway Company v. London and North-Western and Shropshire Union Railway and Canal Company*.—Cur. ad. vult.

— 11.—*Hodge v. Williams*.—Motion granted for receiver.

— 11.—*Soorth v. Chadwick and others*.—Bill dismissed on defendant's undertaking to pay plaintiff his deposit, interest, and costs.

— 12.—*Thomas v. Davey*.—Motion refused to take bill off the file—and order to change next friend.

Vice-Chancellor Knight Bruce.

Cooper v. Earl Powis. Jan. 30, Feb. 7, 1850.

DEMURRER FOR WANT OF PARTIES.—AMENDMENT.—INJUNCTION.—LACHES.

A demurrer for want of parties was allowed in a bill for an injunction to restrain a railway company from applying to parliament for an act to enable them to make part only of their railway, where the plaintiff sued on behalf of himself, as a shareholder, only, against the company and directors—with leave to amend.

Where notice of the company's intention to apply for an act was given the plaintiff in November, and the bill for an injunction was not filed till January, held, too late.

THIS was a demurrer for want of equity and of parties to a bill seeking to restrain the Shropshire Union Railway and Canal Company and the London and North-Western Railway Company from applying to parliament for an act to enable them to construct merely a portion of the railway extending from Stafford and Shrewsbury. The bill was filed by the plaintiff as a shareholder suing on behalf of himself alone in the company.

Bacon and Wilcock, in support of the demurrer, cited *Mazley v. Alston*, 1 Phill. 700.

Mahins, *Rosdell Palmer*, and *Westoby*, contra, referred to *Ward v. Society of Attorneys*, 1 Coll. 370; *Parker v. River Dunn Navigation Company*, 1 De G. & S. 193; *Bagshaw v. Eastern Union Railway Company*, ante, p. 384; *Attorney-General v. Norwich Corporation*, 16 Sim. 225; *Cohen v. Wilkinson*, 38 L. O. 166; 39 L. O. 68.

The Vice-Chancellor said, the bill stated a case for relief and overruled the demurrer for want of equity. The demurrer for want of parties would be allowed, as it must be taken that there were shareholders who were neither parties to the bill nor represented on the record, and who were not sufficiently represented by the body politic as a defendant, but the demurrer to be allowed without costs on either side, and with leave to amend generally.

The bill having been amended, the motion for an injunction was renewed on the 11th February, but the Vice-Chancellor held the

application was too late, the plaintiff having had notice in September last of the company's intention, and the plans having been deposited in December, and having only filed his bill in January—costs reserved.

Esparte Jones, in re Jones. Feb. 18, 1850.

BANKRUPTCY LAW CONSOLIDATION ACT.—APPEAL FROM COMMISSIONER.—WITHIN 21 DAYS.

A petition for the discharge of a bankrupt from prison under the 12 & 13 Vict. c. 106, s. 113; on appeal from the Commissioner, must be presented within 21 days after the order of the Commissioner.

THIS was an application by way of appeal from the Commissioner for the discharge of a bankrupt from Lancaster gaol, under the 12 & 13 Vict. c. 106, s. 112.

Malins in support; *Bacon*, contra, on the ground that more than 21 days had elapsed since the Commissioner's decision.

The Vice-Chancellor refused the application—costs reserved.

March 6.—*Whitmarsh v. Smith*.—Decree reforming marriage settlement according to intention of parties.

— 7.—*Lord Tullamore v. Richards and others*.—Motion refused for injunction restraining General Reversionary and Investment Company from selling the plaintiff's interest in certain family estates in Ireland—he declining to pay arrears of annuity into Court.

— 7.—*Burgels v. Gellner*.—Injunction to restrain defendant from selling plaintiff's composition or using similar labels.

— 6, 8.—*Seagrove v. Pope*.—Decree for redemption of property mortgaged to defendants as trustees of a building and investment society.

— 9.—*In re Madrid and Valencia Railway Company*.—Stand over.

— 9.—*In re Royal Bank of Australia*.—Stand over.

— 9.—*In re Duisbury Iron Works Company*.—Reference to the Master under the Winding-up Act.

— 9.—*Trumpler v. Lockett*.—Plaintiff's title held sufficient, and cause to stand over for trial at law as to value of cargo at time of the loss.

— 11.—*Esparte Chamberlaine, in re West*.—Stand over.

— 11.—*Esparte Jones, in re Jones*.—Hearing of application to discharge bankrupt out of custody ordered to proceed.

— 12.—*Ladbroke v. Lee*.—Decree to give effect to plaintiff's security of mortgage of ships.

Vice-Chancellor Stigam.

Monro v. Taylor. Feb. 18, 20, 1850.

SPECIFIC PERFORMANCE.—VENDOR'S TITLE SHOWN IN MASTER'S OFFICE.—COSTS.

A decree was made, with costs, for specific

performance of a contract to purchase certain property, part of which was freehold and part leasehold, although the vendor only showed a good title after the case was in the Master's office.

This was a bill for the specific performance of a contract by the defendant to purchase certain property, part of which was freehold and part leasehold, held under the Dean and Chapter of Canterbury. It was contended for the defendant, that the plan produced in the Master's office did not sufficiently define the boundary between the two kinds of property. The Master having reported in favour of the plaintiff's title, these exceptions were taken.

The Solicitor-General and Micklethwait in support; Wood and Amplett, contra.

The Vice-Chancellor decreed specific performance with costs, and directed a reference to the Master to settle the conveyance if the parties should differ.

March 6, 7. — *Bradbury v. Shaw* — Motion refused, with costs, to restrain action of ejectment.

— 7. — *Wickham v. Ward* — Order on motion that husband should not be answerable for default in answering of his wife who had lived apart from him for 19 years.

— 8. — *Newman v. Hutton* — Motion refused for new trial of issue at law.

— 8. — *Dixon v. Pyper* — Cur. ad. val.

— 6, 9. — *Mompenny v. Dering* — Cur. ad. val.

— 9, 11, 12. — *O'Brien v. Lord Kensington* — Part heard.

— 12. — *Bircham v. Bignall* — Judgment on construction of will.

— 12. — *Clay v. Rafford* — Stand over.

Court of Queen's Bench.

Wray v. Chapman. Feb. 11, 1850.

MAGISTRATES' CLERKS. — PERSON INFORMATION AND DEPOSITIONS. — POLICE ACT.

Bemble, the clerks to magistrates are entitled to receive from the police fees on informations and depositions, and are entitled to recover the same.

This was an action by the Receiver-General of the Metropolitan Police District, under the 10, G. 4, c. 44, to recover the sum of 66l. 1s. for fees paid by the police to the clerk of the magistrates on informations and depositions, from a receiver of the Richmond district, in the county of Surrey. The defendant pleaded the general issue, but it was turned into a special case for the opinion of this Court.

T. F. Ellis for the plaintiff; Bovill for the defendant.

The Court said, that a table of fees had been drawn up by the magistrates in quarter sessions and approved of by the judges of assize, allowing magistrates' clerks certain fees on informations and depositions, and there was no

statute which prevented the police from having to pay such fees, and when the clerk in the Police Court were paid salaries for performing the same duties. All other parties were entitled to recover fees when the duties had been performed, and there was no exception in respect of magistrates' clerks. The judgment must therefore be for the plaintiff.

— *Regina v. Andoley*. Feb. 14, 1850. —

PAUPER LUNATIC. — MAINTENANCE. — UNION TREASURER. — ACTING FOR TWO TOWNSHIPS.

Held, that it is no objection to an order of justices on the treasurer of a union to pay money for the maintenance of a pauper lunatic to the credit of a township, debiting another township therewith, that the same person acts as treasurer for both the townships, which were included in the same union.

This was a rule to quash an order of sessions quashing an order of justices for the payment of the maintenance of a pauper lunatic, by the treasurer of the Wakefield Union to the treasurer of the County Lunatic Asylum. It appeared that the townships of Ardsley and Wakefield are in the same union, and that one treasurer acts for both, that the order of maintenance was first made on Ardsley township, but was, on the pauper's settlement being ascertained to be in Wakefield township, altered accordingly. The justices then directed the union treasurer to pay to the township of Ardsley the money previously paid for the pauper, charging it to the Wakefield township, and in future pay the asylum treasurer for this latter township. The sessions having quashed this order, on the ground that it was invalid, this rule was obtained.

The Court said, the order of justices was good, and was not made bad by the same person acting as treasurer for the union containing the two townships, as he received the funds separately, and could debit the township of Wakefield with the money paid by that of Ardsley, and for which purpose the order was necessary. The rule would therefore be absolute to quash the order of sessions.

Court of Common Pleas.

Tussell v. Cooper, (P. O.) Feb. 15, 1850.

BANKING FIRM AND CUSTOMER. — LIABILITY.

On special case, held, that a bank cannot, as between its customers, set up a jus tertii for having dishonoured two cheques, although monies stood to its credit at the bank.

These were two actions against the public officer of the London and County Bank in debt to recover the sum of 128l. 1s. 10d., balance of plaintiff's banking account, and in case for damages for dishonouring two of the plaintiff's cheques and disclosing the particu-

lars of the account to a third person. A verdict was taken by consent for the plaintiff in the first action for 128*l.* 1*s.* 10*d.*, and in the second action for nominal damages, subject to a special case. It appeared that in 1844, the plaintiff was a co-tenant with one Palmer of a farm belonging to Lord de Lisle, in Kent, and opened an account, and that shortly after, upon ceasing to be such tenant, he became the steward or bailiff, and in that capacity was in the habit of paying to his account, at the Tonbridge Branch Bank, moneys received for Lord de Lisle, and amongst other sums, a cheque for 180*l.* 4*s.* 8*d.* from Messrs. Vines & Co., for wheat sold on his lordship's account, and which was paid to the bank in January, 1847. In October, 1846, however, Lord de Lisle being dissatisfied with the state of the plaintiff's accounts, had directed him to confine himself to looking after the man, and not to receive any more moneys. His lordship then applied to the manager of the branch bank to inspect the account, and upon being refused, obtained the instructions of the London manager, on January 28, to examine the account, there being a sum due to him of 517*l.* It then appearing there was 128*l.* 1*s.* 10*d.* standing to the plaintiff's credit, Lord de Lisle gave notice to the bank to hold the same, engaging to hold them harmless in so doing. The plaintiff having drawn two cheques on the bank, which were dishonoured, he, on 20th February, demanded the balance of his account, and soon after commenced the present actions.

Joseph Brown for the plaintiff; *Crouch* for the defendant.

The Court said, the cheque from Messrs. Vines had been duly cashed, and the bankers were debtors to the amount thereof, and could not set up a *jus tertii*, the transaction being a simple transaction between the plaintiff and the bank. He was therefore entitled to a verdict for 128*l.* 1*s.* 10*d.* in the first action, and in the second action on the 1st count, for improperly dishonouring his cheques, but for the defendant on the 2nd count, charging a breach of the duty of bankers not to disclose their customers' accounts without license.

Court of Exchequer.

Carr v. Mostyn. Jan. 25, Feb. 11, 1850.

PAROCHIAL CHAPELRY.—CHAPEL OF EASE.
—SURPLICE FEES.

On special case, held, that, as the deed of feoffment of a chapel gave the chapel, &c., to trustees, with power to elect a minister to perform service therein, and to repair the chapel out of the pew rents, without any mention of chapel-wardens, registers, or church-rates, or other duties, it was a chapel of ease, and not a parochial chapelry, and that the minister thereof was not entitled to recover certain surplice fees from the curate of a district chapel.

THIS was an action by the incumbent of St. Helen's church, in the parish of Prescott, Lan-

cashire, to recover the sum of 6*l.* 16*s.*, the amount of certain surplice fees received by the curate of St. Thomas, in the same parish. At the trial, before Mr. Justice Wightman, at the Liverpool Summer Assizes, 1847, this case was prepared for the opinion of the Court, with liberty to draw such inferences as a jury might draw. It appeared that, by a deed of feoffment in 11 James I, the chapel-yard and croft were given to certain trustees in trust for ever at a pepper-corn rent, who were authorised to elect a minister to read the service of the church and to manage the chapel, which was to be repaired out of the pew-rents.

Cooling, for the plaintiff, contended that St. Helen's was a parochial chapelry of Prescott with a district attached to it out of which the subordinate district of St. Thomas had been taken under the 1 & 2 W. 4, c. 38.

Crompton, contra, urged that the fees belonged *primâ facie* to the vicar of Prescott, and that St. Helen's was not a parochial chapelry, the district attached having, for all ecclesiastical purposes, always remained part of the parish.

Cur. ad. vult.

The Court said, the question was, whether St. Helen's was a parochial chapelry or a chapel of ease. It appeared from the deed of feoffment, there was no mention of any duties other than reading the church service, which would have been the case had it been a parochial chapelry, and it must therefore be taken to be a chapel of ease, and judgment would be for the defendant.

Catto and others v. Sothern. Feb. 12, 1850.

CONTRACT.—BANKRUPT'S ASSIGNEES.—
CONSIDERATION.

The assignees of a bankrupt were held entitled to recover on a contract by the bankrupt, who in consideration of a sum of money, agreed to give the defendant such information as would enable him to obtain a cargo of guano at an island off the coast of Africa—as by following the same a cargo might have been obtained, notwithstanding some misdescription as to the place.

A RULE nisi had been obtained for new trial on the ground of misdirection in an action by the assignees of one Amy on a contract entered into by him and the defendant, who undertook to pay a certain sum in consideration of Amy giving information of an island where he could obtain a cargo of guano. The island in question was stated to be Penguin Island, eight leagues to the north of Pedestal Point, and the defendant sent an experienced captain, who, however, disregarded the information and proceeded to another island, where he obtained an insufficient cargo. It appeared that if the information had been followed, the captain would have touched at Ichaboe. Mr. Justice Wightman, who presided at the trial, having directed the jury to find for the plaintiffs, this rule was obtained.

Atherton in support; *Martin* and *Crompton*, contra, were not called on.

The Court held, that as the information given would have led to the desired result, it formed a sufficient consideration for the contract, and the rule must be discharged.

Court of Exchequer Chamber.

Garther v. Tuck. Feb. 2, 1850.

WRIT OF ERROR.—COMMON LAW SIDE OF COURT OF CHANCERY.—COURT SITTING IN ERROR.—JURISDICTION.

The writ of error directed under the 12 & 13 Vict. c. 109, s. 39, is returnable before either of the three Superior Courts, and not before the Court sitting in error.

THIS was a motion to quash a writ of error in this case, which had been issued on the

common law side of the Court of Chancery, on the ground that it had been sued out contrary to good faith. By the 12 & 13 Vict. c. 109, s. 39, it is provided, that "it shall be lawful for the Superior Courts of Common Law and the judges thereof respectively," &c., "to hear and determine all such matters or applications arising in or incident to any such actions," &c., "as before the passing of this act might have been heard and determined by the Lord Chancellor and the Master of the Rolls." The Master of the Rolls had held, that he had no jurisdiction in the matter.

Unthank in support; *Willes* and *O'Malley*, contra.

The Court held, that the Court of Error had no jurisdiction, and that the power to quash the writ was conferred under the 12 & 13 Vict. c. 109, on one of the three Superior Courts of Law. The application was therefore refused, but without costs.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see

Jurisdiction of County Courts, p. 87.
Poor Law and Magistrates' Cases, 108.

Courts of Common Law :

Construction of Statutes, 128, 146.
Principles and Jurisdiction, 165.
Appeals from Revising Barristers, p. 189.

Courts of Equity :

Law of Attorneys and Solicitors, p. 229.
Law of Property and Conveyancing, p. 246.
Evidence, p. 289.
Law of Costs, p. 330.
Pleading, p. 371.]

CONSTRUCTION OF STATUTES.

BOROUGH FUND.

1. *Application of*.—Upon a true construction of the Municipal Corporation Act, it is the duty of corporations to provide, as far as they can, within the year, for the expenses of the year, by securing, by means of a rate, if other lawful means are insufficient, such an income as, upon a proper estimate, may be found necessary, and they ought not to contract debts to be paid in future years, for the purpose of avoiding in the current year to provide for the expenses then incurred. But, on the other hand, it is not clear that the act ought to be so strictly construed as to lead to the conclusion, that an expense not included in a prior estimate, and so incurred as to constitute what may be justly called a debt, before a subsequent estimate or rate is made, can in no case whatever be lawfully provided for by such subsequent estimate or rate.

In a case requiring its exercise, the Court may have jurisdiction to restrain the corporation from making any new or additional borough rate, for the purpose of paying thereout any expenses incurred previously to making the same.

The Court has jurisdiction, if it be expedient and the case required it, to restrain the application of money collected by rates for costs, debts, and expenses incurred prior to making the rate.

A motion against a municipal corporation and its officers for an injunction to prevent:—1. The application by them of the money already collected by a borough rate for costs, debts, or expenses incurred prior to the making of the rate; 2. From taking any steps to enforce payment of sums not yet received under the rate; and 3. From making any new or additional rate for the purposes of paying thereout any expenses incurred prior to the making of the rate, refused under the circumstances. *Attorney-General v. Corporation of Lichfield*, 11 Beav. 120.

2. *Breach of trust*.—*Injunction*.—*Jurisdiction*.—The borough fund created under the Municipal Corporation Act, (5 & 6 W. 4, c. 76,) is a trust fund, and this Court has authority and jurisdiction to compel the parties who receive and apply the fund to account for the sums they receive, and the application of them. *Attorney-General v. Corporation of Lichfield*, 11 Beav. 120.

INTEREST.

Stat. 3 & 4 W. 4, c. 42.—After some disputes between a corporation and trustees of charity estates, a compromise was agreed on and confirmed by act of parliament, under which the corporation were to sell certain estates, and out of the proceeds pay to the

trustees a gross sum of money by a fixed day. The money was not paid by the time appointed; but there being no case of wilful default made against the corporation, it was held, that they were not liable to pay interest on the gross sum. *Attorney-General v. Laidlaw Corporation*, 1 H. & T. 316.

Case cited in the judgment: *Hyde v. Price*, 8 Blm. 578.

See *Pawnbrokers' Act*.

JOINT-STOCK COMPANIES' WINDING-UP ACT.

1. *Contributory*.—*Liability of shareholder after transfer of his shares*.—A party who has transferred his shares in a joint-stock company within three years may be included in the list of contributories prepared in pursuance of the Joint-Stock Companies' Winding-up Act, 1848; the order in which his liability attaches being a subject for future arrangement. *Esparte Hawthorn, in re North of England Joint-Stock Banking Company*, 1 H. & T. 225.

2. *Trading company*.—*Tests of insolvency*.—A joint-stock company, formed for the insurance of cattle, had sustained heavy losses, and was under liabilities to their insurers to a great amount. Many of the shareholders had been allowed to retire from the company, so as to avoid any future liabilities: Held, that the Court is not entitled, under the Winding-up Act, to look into the accounts of the company; and there being none of the tests of insolvency provided by the act, nor any act done which amounted to a dissolution of the company, the Court refused to make any order for winding up the affairs of the company.

Quere, whether a company formed for such purposes is within the scope of the Winding-up Act? *Esparte Spackman, in re Agriculturist Cattle Insurance Company*, 1 H. & T. 229; 1 M.N. & G. 170.

3. *Association provisionally registered*.—*Railway*.—*Trading Company*.—An association formed for the purpose of obtaining an act of parliament to make a railway for the carrying of passengers and goods is a commercial speculation, whether they purpose to run their own engines and carriages, or to let the railway to other parties; and such an association being provisionally registered, but the project being afterwards abandoned, is within the scope of the Joint-Stock Companies' Winding-up Act, 1848.¹ *Esparte Barber, in re London and Manchester Direct Independent Railway Company*, 1 H. & T. 238; 1 M.N. & G. 176.

4. *List of contributories*.—In making out the list of contributories under the provisions of the Joint-Stock Companies' Winding-up Act, 1848, the Master is bound to include all those who may be liable under any circumstances, although as between individual shareholders there may be an equity protecting one of them from liability to the other. *Esparte Morgan, in re Vale of Neath Brewery Company*, 1 M.N. & G. 225.

5. *Power of general meetings of shareholders*.—*Purchase of shares*.—*Liability of contributor*.—*Contributory*.—In pursuance of a resolution passed at an extraordinary general meeting of an unincorporated company, a shareholder sold his shares to the directors, upon the terms that he should withdraw from the company and be no longer liable to any debts of the company. No power to enter into such an arrangement was contained in the deed of settlement of the company: Held, that the shareholder was still liable to the debts of the company, and was properly included in the list of contributories under the Joint-Stock Companies' Winding-up Act, 1848. *Esparte Morgan, in re Vale of Neath Brewery Company*, 1 H. & T. 320; 1 M.N. & G. 225.

LAND TAX REDEMPTION ACT.

Sale of part of Lunatic's estate.—*Power of Committee*.—Notwithstanding the provisions contained in the Land Tax Redemption Act, (42 G. 3, c. 116,) it is the duty of the committee of a lunatic to obtain the sanction of the Lord-Chancellor before proceeding to a sale of any part of the lunatic's estate, for the purpose of raising monies wherewith to redeem the land tax. *In re Wade*, 1 H. & T. 202.

LANDS CLAUSES CONSOLIDATION ACT.

1. *Costs of reference to Master*.—*Lunatic*.—The costs occasioned by a reference to the Master, as to the propriety of a sale of part of the lunatic's estate to a railway company, ordered to be paid by the company under the 80th section of "The Lands Clauses Consolidation Act, 1845." *In re Taylor*, 1 M.N. & G. 210.

2. *Construction of section 68*.—*Summoning jury*.—The owner of property not required for the purposes of a railway company, has no right to enforce, as against the company, the provisions of the 68th section of the Lands Clauses Consolidation Act, 1845, (8 Vict. c. 18,) on the allegation that his property is injuriously affected by the proximity of the railway.

Where a party so circumstanced had given notice to the company either to pay the amount claimed by him for compensation, or to summon a jury under the 68th section, the Court, at the instance of the company, granted an injunction restraining him from taking any proceedings under the notice, and, at the same time, gave him liberty to bring an action for the purpose of trying his right for compensation. *London and North Western Railway Company, v. Smith*, 1 M.N. & G. 216.

LUNATIC.

Payment of future dividends of stock.—*Curator bonis of lunatic*.—The act 1 W. 4, c. 65, does not render it imperative on the Lord Chancellor, on the application of a curator bonis of a lunatic appointed by the Court of Session in Scotland, to order a transfer of stock standing in the lunatic's name in the Bank of England, (the property of the lunatic,) into the curator's name.

The Lord Chancellor will order payment by the Bank to the curator bonis, of the past

¹ But see 12 & 13 Vict. c. 105, s. 1.

dividenda due on the stock, but not future dividends. *In re Morgan*, 1 H. & T. 212.

See *Land Tax Redemption; Land Clauses Consolidation*, 1.

MORTMAIN ACT.

1. The Court will make a decree for the appointment of new trustees of lands, for a charitable use, although the deed originally declaring the use be not enrolled under the Mortmain Act, if the trustees in whom the legal estate is vested admit the trust, and do not object that the deed is void under the statute, but submit to act under the direction of the Court. *Attorney-General v. Ward*, 6 Hare, 477.

2. Upon an information for the appointment of new trustees of a dissenters' meeting-house, on the ground that the parties in possession had excluded persons who, according to the trusts, were entitled to the use of the premises, and had admitted others to the use of the same who were not entitled thereto; the Court made a decree for the appointment of new trustees, notwithstanding the deed declaring the trust was not enrolled according to the provisions of the Mortmain Act, (9 G. 2, c. 36,) and notwithstanding the defendants, who had (permissively) the possession and use of the premises objected, at the hearing, that the deed was void under the statute; the defendant who had the legal estate admitting the trust, and submitting to act as the Court should direct. *Attorney-General v. Ward*, 6 Hare, 477.

3. Proof of 25 years' usage of a dissenters' meeting-house for worship, by persons of a certain religious society, is not, under the statute 7 & 8 Vict. c. 45, conclusive evidence that the trusts of the premises are for the benefit of that society, where such trusts are declared upon the face of the deed, by which the premises are dedicated to the charitable use, although such deed, not being enrolled, is "to all intents and purposes null and void," under the Mortmain Act. *Attorney-General v. Ward*, 6 Hare, 482.

PAWNBROKERS' ACT.

Usury law.—Loan by Pawnbroker exceeding 10%.—A loan of money exceeding 10% (which was held not to be a pawnbroking transaction,) upon the security of goods, upon such terms as to interest, &c., as are authorised by the usury laws, (2 & 3 Vict. c. 37.) is not invalid merely because the lender is a pawnbroker.

A loan by a pawnbroker, of money exceeding 10%, upon the security of goods deposited, is not a pawnbroking transaction, merely on account of the character of the lender, nor because the agreement entered into reserves interest at 3d. a month for every 20s. lent, and stipulates, that, in case the goods are sold, the surplus shall be kept by the lender, if not claimed within three years, and that the goods may be delivered up to any party who produces the duplicate of the agreement and pays the debt; although these are the stipulations in pawnbroking transactions. *Fitch v. Rogers*, 11 H. & T. 255; 1 M. & G. 184.

Cases cited in the judgment:—*Turquand v.*

Mosedon, 1 M. & W. 504; *Pennell v. Attenborough*, 4 Q. B. 868.

RAILWAY COMPANY.

1. Notice.—A railway company being empowered by their act to take, amongst other lands, a close belonging to the plaintiff, gave him notice of their intention to take a certain part of it; and more than a year afterwards, they gave him notice to take the remainder. The part first taken was intended for making the railway, and the remainder for making a station, both of which their act empowered them to make. Held, that the power of the company with respect to the plaintiff's close, was not exhausted by their first notice. *Simpson v. Lancashire and Carlisle Railway Company*, 15 Sim. 580.

2. Power to take lands.—The time allowed, to a railway company, for the exercise of their power to take lands, was 3 years from the passing of their act. During that time, they gave the plaintiff notice of their intention to take his lands, and summoned a jury to assess the value of them: but the 3 years expired before the jury gave their verdict; and, on that account, the Vice-Chancellor held that the company were not entitled to take steps for obtaining possession of the plaintiff's lands.

But the Lord Chancellor did not agree with his Honour, and ordered the opinion of a Court of law to be taken on the point. *Brookbank v. Whitehaven Junction Railway Company*, 15 Sim. 632.

RAILWAY CLAUSES' CONSOLIDATION ACT.

Levels of streets, power of railway company.—*Engineering works.*—By a clause in a special railway act, after reciting that plans and sections of the railway, showing the respective lines and roads thereof, and also books of reference containing the names of the owners, lessees, and occupiers of the lands through which the respective lines of railway were intended to pass, had been deposited with the clerks of the peace, it was enacted, that, subject to the provisions in that and the recited acts contained, it should be lawful for the company to make and maintain the railway and works in the line, and upon the lands delineated on the said plans. On one of the plans so deposited was a cross section showing the mode in which a particular street, in a large town, was to be carried over the intended railway by a bridge, and showing also the intended approach to that bridge along the street, to be at an ascent of 1 in 40. The Railway Clauses' Consolidation Act contained no restriction as to the height at which any bridge over a street was to be made, but only a restriction as to the ascent of a bridge to be made. In executing the works, the company proceeded to make the approach to the bridge at an ascent of 1 in 115, by means of which they considerably raised the level of the street opposite the plaintiff's premises, thereby obstructing the access thereto, and otherwise damaging the plaintiff's enjoyment of his premises. Held, that the company had a right, under the Railway Clauses'

Consolidation Act, to raise the level of the street, and that they were not restricted from so doing by the clause in the special act, referring to the plans and sections deposited with the clerks of the peace.

Held, also, that the deposited plans referred to in the special act, *per se*, constituted no obligation, and, unless incorporated in the act, they created no right between the parties to the suit; the plans being deposited not for the purpose of exhibiting the surface appearance, but of showing what was the *datum* line.

The words "engineering works," in the 14th section of the Railway Clauses' Consolidation Act, mean other engineering works *ejusdem generis*, that is, other engineering works in the formation of the railway itself.

Rules by which the Court is influenced in putting a construction upon different sections in an act of parliament which may appear opposed to each other. *Beardner v. London and North-western Railway Company*, 1 H. & T. 161; 1 M'N. & G. 112.

Cases cited in the judgment: *North British Railway Company v. Tod*, 12 C. & F. 732; *Foote v. Heriot's Hospital v. Gibson*, 2 Dow, 301.

STATUTE OF LIMITATIONS.

1. *Judgment debt*.—*Personal estate or land of debtor*.—The 40th section of the Statute of Limitations (3 & 4 Wm. 4, c. 27) applies to a case in which a judgment is sought to be enforced against the personal estate, as well as to a case in which it is sought to be enforced against the land of the debtor. *Watson v. Birch*, 15 Sim. 523.

3. *Creditor's suit*.—*A.*, a creditor of a person deceased, filed a bill on behalf of himself alone, against *B.*, the personal representative of the debtor, and *C.*, who had in his possession certain papers belonging to the debtor, on which he claimed a lien for a debt alleged to be due to him from the deceased. The bill prayed for the usual accounts of the deceased's estate, and that it might be applied in a due course of administration; that *A.* might have access to the papers; and that the amount of *C.*'s lien, if any, might be ascertained and paid. The decree in the cause directed an account to be taken of *A.*'s debts, and the amount to be paid out of a fund in Court, and, if the fund should be more than sufficient for that purpose, that what should be found due to the other incumbrancers should be paid to them; but it did not direct any account to be taken of those incumbrances; and, accordingly, the Master took an account of *A.*'s debt only. After it had been paid, *C.* presented a petition in the suit, praying for an account of what was due to him, and for payment of it out of the remainder of the fund. The order made on that petition, directed the Master to inquire and state who were the incumbrancers, others than *A.*, referred to by the decree.

Held, that neither the institution of the suit, nor any of the proceedings under it, prevented the Statute of Limitations from running

against *C.*'s claim. *Watson v. Birch*, 15 Sim. 523.

STOCK-JOBBER ACT.

Penalties.—A bill sought, as against stock-brokers, a discovery of certain sales of stocks and shares. The defendants, by their answer, stated, that some of them were illegal time bargains, and refused to give a discovery of any of the transactions: *Held*, that they were bound to answer as to the legal matters. *Fisher v. Price*, 11 Beav. 194.

TITHE PRESCRIPTION ACT.

The object of the Tithe Prescription Act, 2 & 3 Wm. 4, c. 100, to be inferred from its preamble as explained by the enacting part, was, to prevent the expense and inconvenience of suits for tithes, by establishing certain limitations of time, after which claims of moduses and discharges should not be questioned. And the effect of the act, as applicable to claims of exemption, is not only to facilitate the proof of exemption *de facto* for the time past, but to dispense with the proof (which was before required from laymen) of any legal origin of such exemption.

And *semble*, (though the opinion of the majority of the judges consulted was to the contrary,) that the act applies to cases in which it appears that the lands have paid tithes of some titheable matters, other than those for which the exemption is claimed, and even where such last-mentioned matters are of modern introduction; as well as to cases in which the lands have been enjoyed without payment of any tithes.

But *held*, that, at all events, it is sufficient, even in a case of the former description, for the occupier to allege and prove that his lands have been enjoyed for the prescribed period without payment of the tithes demanded, unless the party claiming the tithes shall specifically allege, as well as prove, that other tithes have, during that period, been paid. And, therefore, where a bill by a vicar for some particular tithes contained no such allegations, and the defendants alleged and proved that their lands had been enjoyed for the prescribed period, without payment of the tithes demanded, or any money or other matter in lieu thereof, it was *held*, that the Court could not notice the fact that tithes of other matters had been paid for the same lands, although that fact was clearly established by the evidence in the cause; and, therefore, that, whether the fact were so or not, the defence set up was, upon these pleadings, a complete answer to the plaintiff's demand, and the bill was accordingly dismissed.

Semble.—That a modus proved to have been acted upon for the prescribed period cannot be defeated on the ground of rankness. *Salkeld v. Johnston*, 1 M'N. & G. 242.

TRUSTEE RELIEF ACT.

Before the general orders of June, 1848, money might be paid into the name of the Accountant-General, under the 10 & 11 Vict. c. 96, without any order of the Court. *In re Biggs*, 11 Beav. 27.

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SATURDAY, MARCH 23, 1850.  
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THE BANKRUPT LAW CONSOLIDATION BILL, 1850.

THE second reading of the bill introduced by Lord Brougham at the commencement of the Session, for amending and consolidating the Bankrupt Laws, has been postponed for six weeks, and it is now manifest that the measure will not obtain that support from the government without which it is hopeless to expect it should become law. It has not yet been intimated whether the government intend to bring in a short bill to correct the errors contained in the act of last Session. From the preparations in progress to carry the act 12 & 13 Vict. more fully and completely into effect, it is rather to be inferred that no intention is at present entertained to make any change in the existing law, but if an amendment act be contemplated, there is no good reason why the alterations in the Law of Bankruptcy, suggested in the bill now before the House of Lords, should not be considered, and, if approved of, engrafted on the government measure. It has been already observed, that the alterations in the law proposed in Lord Brougham's bill are not numerous, nor, so far as we understand, objectionable in principle. These alterations are contained in articles 20, 166, and 192 of the new bill.

In article 20 it has been deemed necessary to introduce words giving the Court of Bankruptcy express power "to make order annulling any fiat heretofore issued." The question where the jurisdiction resides to annul or supersede a fiat seems to have been left in doubt by the act 12 & 13 Vict. c. 106. Both the Lord Chancellor and Vice-Chancellor Knight Bruce have expressed doubts whether they have now any jurisdiction to annul a fiat, unless perhaps upon an appeal; and although in a case *Ex-*

parte Harwood, (Mich. T. 1849,) Lord Cottenham consented to make an order to annul, he did so expressing some doubt whether the order would have any validity, and expressly intimated that he interfered on the ground that proceedings were pending previously to the 11th October last, when the 12 & 13 Vict. came into operation. The general opinion of the profession, we believe, is, that original jurisdiction in matters of bankruptcy is now vested exclusively in the Commissioners, and that the Vice-Chancellor sitting in bankruptcy, and the Lord Chancellor, have no jurisdiction, except upon appeal. The alteration proposed to be made, by inserting the words in italics in the following clause, is in conformity with the construction of the act above referred to:—

"(Art. 20.) The Court, in the exercise of its primary jurisdiction by virtue of this act, shall have superintendence and control in all matters of bankruptcy, and may make order annulling any fiat heretofore issued, and shall hear, determine, and make order in any matter of bankruptcy whatever, so far as the assignees are concerned, relating to the disposition of the estate and effects of the bankrupt, or of any estate or effects taken under the bankruptcy, and claimed by the assignees for the benefit of the creditors, or relating to any acts done or sought to be done by the assignees in their character of assignees, by virtue or under colour of the bankruptcy; and also in any matter of bankruptcy whatever as between the assignees and any creditor or other person appearing and submitting to the jurisdiction of the Court; and also in any application for a certificate of conformity, and in any other matter (whether in bankruptcy or not) where the Court, by virtue of this act, has jurisdiction over the subject of the petition or application; save and except as may be by this act otherwise specially provided, and subject in all cases to an appeal to such one of the Vice-Chancellors of the High Court of Chancery as the Lord Chancellor shall, from time to time, be pleased

to appoint to sit in bankruptcy: *Provided always, that such appeal shall be on the case or matter heard before the Court below, and on such only, and that no evidence shall be admitted by affidavit or otherwise in support of such appeal, except the evidence which shall have been admitted or tendered before the Court below.* And provided also, that if no such appeal shall be entered within 21 days from the date of any decision or order of the Court, and be thereafter fully prosecuted, every such decision or order shall be final; and that every appeal shall be subject to such regulation in regard to deposit of costs as shall by any general rule or order to be made in pursuance of this act, be directed."

The limitation contained in this provision, confining not only the matter of the appeal, but the evidence to be adduced in support of it, to that already tendered in the Court below, is deserving of consideration, but not altogether free from objection. No provision is made or suggested by which the Court of Appeal is to be put in possession of the evidence adduced in the Court below, yet some such enactment is apparently necessary.

The next provision, involving an alteration of the law suggested by the bill now before the House of Lords, is the extension of an enactment contained in the Insolvent Act, relating to the pay and pensions of civil, military, and naval officers in the public service who happen to become bankrupt. The statute 1 & 2 Vict. c. 110, s. 56, enacts, that the rights of assignees of those insolvents who are officers in her Majesty's service, or the service of the East India Company, shall not extend to the pay, half-pay, salary, or emoluments of such insolvents; but that a portion of their pay or pension may, with the consent of the heads of the department to which the officer belongs, be appropriated for the liquidation of the insolvent's debts. It is quite time that this provision, which is at once rational and just—as it contemplates the appropriation of only a proportion of the insolvent's income, leaving him sufficient to enable him to maintain his position in the public service—should be engrafted on the Bankruptcy law, as cases could be referred to where persons to whom it was applicable have become traders in order to render themselves subject to the Bankrupt Laws and thereby escape its operation, to which they must have been exposed upon presenting themselves before the Court for the relief of Insolvent Debtors. This is one amongst the numerous instances which could be cited where the artificial distinction existing between bankruptcy and insolvency creates in-

convenience and injustice. It will be seen that the proviso to the 56th section of the 1 & 2 Vict. c. 110, is now copied in Lord Brougham's Bill, with the accidental omission of certain words which a perusal of the "article" will enable our readers at once to discover:—

"The Court may order such portion of the pay, half-pay, salary, emolument, or pension of any bankrupt, as on communication from the Court to the Secretary of War, or the Lords Commissioners of the Admiralty, or the Commissioners of the Inland Revenue, or the chief officer of the department to which such bankrupt may belong or may have belonged, or under which such pay, half-pay, salary, emolument, or pension may be enjoyed by such bankrupt, or to the Court of Directors of the East India Company, they respectively, may under their hands or under the hand of their respective chief secretary, or other chief officer for the time being, consent to in writing, to be paid to the official assignee, in order that the same may be applied in payment of the debts of such bankrupt; and such order or consent being lodged in the office of her Majesty's Paymaster-General, or of the secretary of the said Court of Directors, or of any other officer or person appointed to pay, or paying any such pay, half-pay, salary, emolument, or pension, such portion of the said pay, half-pay, salary, emolument, or pension, as shall be specified in such order and consent shall be paid to such official assignee, until the Court make order to the contrary."

The only "article" in the new bill which remains to be noticed as introducing an alteration in the Bankrupt Law, is that numbered 192, which is also copied from the Insolvent Act, (1 & 2 Vict. c. 110). By this section, the authority of assignees is not to extend to the income of a benefice or curacy, but they may obtain a sequestration of the profits in the same manner as a sequestration issues upon a *levari facias* founded upon a judgment against a beneficed clergyman. Whether the "article" by which it is proposed to import this provision into the Bankrupt Law, and which is subjoined, may not have been advantageously framed in such a manner as to leave less doubt as to the rights of assignees and the duty of these empowered to grant a sequestration, we do not stop to inquire. The assimilation of the Bankrupt and Insolvent Law in this as in other particulars, involves an important principle which we hope at no distant period to see fully carried out. The 192nd article is as follows:—

"Nothing in this act contained shall entitle the assignees of the estate and effects of any

bankrupt, being a beneficed clergyman or curate, to the income of such benefice or curacy, for the purposes of this act. Provided always, that it shall be lawful for such assignees to apply for and obtain a sequestration of the profits of any such benefice or curacy for the payment of the debts of such bankrupt; and the certificate of appointment of such assignees shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceeding to authorize the same; and such sequestration shall accordingly be issued, as the same might have been issued upon any writ of *levari facias*, founded upon any judgment against such bankrupt."

Although Lord Brougham's Bill may not, and there is good reason to suppose will not, obtain the immediate sanction of the legislature, the alterations pointed out are not of such a nature as to produce opposition, and might advantageously be embodied in any bill hereafter introduced for the amendment of the Bankrupt Law. That some such measure, though not immediately contemplated, must at no very distant period be introduced, seems to be conceded by all acquainted with the practical operation of the act of last session. It is possible, however, that its deficiencies will in some degree be supplied, and its defects to some extent corrected, by the General Rules and Regulations framed by the Commissioners and sanctioned by the Chancellor. These rules, we understand, are actually prepared and printed, and we hope they will speedily be promulgated.

REAL PROPERTY CONVEYANCE.

NEW MODE OF TAXING COSTS.

THIS is "a Bill to amend and extend certain Provisions of an Act made in the 8th and 9th years of her present Majesty, intitled 'An Act to facilitate the conveyance of Real Property.'"

By the 1st clause it is proposed to be enacted, "that in taxing any bill of costs for preparing or executing, or preparing and executing any deed, will, or other instrument in writing, it shall be lawful for the taxing officer, and he is thereby required, in estimating the proper sum to be charged for such transaction, to consider, *not the length* of such deed, will, or other instrument, but *only the skill and labour* employed and the *responsibility* incurred in the preparation thereof."

The present charges in conveyancing transactions have been long established and are well known throughout the kingdom.

The length of any instrument furnishes a criterion of charge which guides, in a great measure, the Taxing Masters to the proper allowances. If the proposed alteration should take place, the scale of charge will become altogether uncertain, depending upon an estimate formed by the party to be remunerated of the skill and labour employed and responsibility incurred in every individual case, and which it will be extremely difficult, if not impossible, to ascertain correctly. It is probable, therefore, that the charges to the client will become, on the whole, much heavier than at present.

The taxation of costs between attorney and client takes place in comparatively few cases; but if the present mode of charge were abolished, and no other substituted in its stead, it would be competent for every practitioner to estimate his own labour, skill, and responsibility, and the expense, difficulty, and uncertainty of a taxation would be very greatly increased, inasmuch that in ordinary transactions a taxation would be impracticable.

It is therefore manifest that a compulsory exclusion of the length of a deed as an ingredient in estimating the charge of solicitors will be injurious rather than beneficial to the public.

The alteration of the law proposed by the bill would take away the discretionary power now vested in the taxing officers, and which is exercised as well for the protection of the client as for the just remuneration of the practitioner. If the taxing officers were precluded altogether from considering the length of deeds and other instruments, a want of uniformity would unavoidably arise in practice;—injustice would be done either to the solicitor entitled to receive, or to the party liable to pay the charges;—and it would be frequently impracticable to award the proper amount of remuneration for skill and responsibility without requiring evidence on both sides to determine the facts in question.

Where the instruments or papers charged for by solicitors are deemed of unnecessary length, the taxing officers are already empowered to make such reductions as they consider just and reasonable, and it should still be left to the discretion of those officers to consider as well the extent or length of the papers or documents as the skill employed and the responsibility incurred in preparing them.

Such discretionary power of the taxing officers is exercised under the directions of the several Courts of Law and Equity, and

and is always subject to appeal by either party, and it is therefore evident that every reasonable safeguard already exists against overcharges.¹

RAILWAY AUDIT BILL.

REASONS AGAINST PART OF THE 26TH CLAUSE.

THE 26th clause provides, that the auditors under the bill shall, after the accounts of any railway company are made up, make a separate report upon the accounts of such company; and where such auditors are of opinion that the receipts or expenditure of such company are incorrectly set forth in such accounts, or are incorrectly appropriated to the account of capital or revenue, or that the true state of the affairs of such company is not fairly represented in the accounts, or that any dividend declared has not been made out of profits, "*or that any law expenses have been paid by such company without previous taxation*, such auditors shall state in their report such their opinion, and the facts, matters, and circumstances on which the same is founded."

The obvious meaning and intention of the latter part of this clause is, that no law expenses shall be paid by any railway company without previous taxation.

The Incorporated Law Society, who have petitioned against this provision in the bill, so far from being hostile to the principle of taxation in any case in which the client is dissatisfied with the charges of his solicitor, were themselves the originators and promoters of the Act of 1843, by which parliamentary and conveyancing costs, which previously were not taxable, were rendered liable to taxation, as well before as after payment.

But the petitioners submit "*That this provision is unnecessary*,

"Because under the existing law (6 & 7 Vict. c. 73, s. 37) all bills of solicitors, including the legal and parliamentary costs, referred to in the clause, are liable to taxation, not only by the directors of companies, but also by the shareholders, (sect. 38,) if the directors do not tax them and the shareholders think fit to do so, and whether the bills shall have been paid without taxation or not, (sect. 41). By the act referred to, a tribunal was established for the taxation of parliamentary and conveyancing costs, which previously were not liable to taxation.

¹ The above is the substance of a petition to the House of Commons, presented by the Incorporated Law Society.

That it is invidious and unjust towards Solicitors,

"Because the bill does not interfere with the payment by railway companies of the charges of engineers, architects, surveyors, or other professional persons employed by such companies. All those parties are allowed to make their own charges, which in case of dispute can be ascertained only before a jury, whilst by the existing law the charges of solicitors can be immediately referred to the proper officer for taxation, and if more than a certain proportion be disallowed, the solicitor is liable to the costs of the taxation. The provision assumes that railway directors may be intrusted with unlimited powers, i. e., the employment and payment of all persons except solicitors.

That it is contrary to public policy,

"Because it is an attempt to interfere with the exercise of the discretion of railway companies in the payment of the agents employed by them.

That it is injurious to Railway Companies,

"Because it compels them to incur the expense of taxation, which is considerable, although the directors and shareholders are satisfied that the charges are correct, and are desirous to avoid that expense."

These objections have been raised in a Petition from the Incorporated Law Society.

DEBATE ON THE COUNTY COURTS' EXTENSION BILL.

THE objections to this bill were ably stated at the time of its introduction on the 26th Feb. It will be observed from the following speeches, that not only the Secretary of State for the Home Department and the Attorney-General are opposed to the extension, but the member for Oxfordshire and other members.

The Attorney-General on rising, was met with cries of "Agree, agree." The hon. and learned gentleman said, as it was the desire of the house to see the measure of the hon. gentleman, he was not inclined to interpose any opposition to its introduction (hear, hear); but he felt it his duty, though he was aware that by so doing he should incur a certain degree of unpopularity, to point out some of the objections which he entertained to the bill. The cases stated by the hon. gentleman would be equally applicable to 51l. or to 52l. as to 30l. or 40l. He was quite aware that a person who advocated the entire abolition of the Superior Courts might bring forward those cases in support of his arguments, but those who

thought that there should be some limit to the jurisdiction could hardly avail themselves of them. The hon. gentleman stated that there was no reason why the sum of 20*l.* had been taken. There was, however, the strongest possible reason for fixing on that sum. 20*l.* was the sum within which the Legislature had laid it down that a party could not be arrested, and it was the sum which the Superior Courts had deemed to be of so insignificant an amount as to be unworthy of expensive litigation. Nor had the experiment of the County Courts been properly tried. It had only been in operation for two or three years,—working well, he agreed, and giving great satisfaction hitherto for the collection of small debts,—but what effect it would have for the encouragement of credit and the improvidently incurring of debts, was a question which they had not yet had the means of ascertaining. (Hear, hear.) It was, he asserted, a mere experiment which had not been properly investigated, and the hon. gentleman had not the fullest means of ascertaining how an experiment of this description acted. The hon. gentleman had not correctly represented his views with respect to an appeal. What he said on a former occasion, and repeated now, was, that if they gave no appeal in the higher amounts, he apprehended the Court would not work satisfactorily, because there would be no check upon the judge; there would be no bar to interpose; no press to publish the proceedings. Men swore in their own cases under the most exciting influences; and, though the custom might work well in small amounts, yet he considered that it would be dangerous in large ones, on account of the great temptation; and he might state, as the result of his own professional experience, that in the case of arbitrations, where the arbitrator had the power to examine the parties, he never availed himself of it unless he were driven to it by the necessities of the case, so great was the temptation. If they gave an appeal in matters below 20*l.* they destroyed the Court altogether; and if above 20*l.*, they dissatisfied the bulk of the suitors, who, having actions under that sum, complained, that whereas their richer neighbours were allowed an appeal, no such privilege was extended to them. Moreover, every reversal would be jealously watched by the smaller suitors, and would be magnified into a proof of the incompetence of the judge,—in fact, by giving an appeal, they shook the confidence of the public altogether in the Court. (Hear, hear.) In saying this much, he begged to disclaim any personal motive. He was simply performing his duty, and, though he should not object to the introduction of the bill, he must say that he was satisfied that it would be a most dangerous step to adopt.

Mr. Henley expressed his regret, that after the convincing and unanswerable speech of the Attorney-General, who, it might be presumed, spoke the mind of the government on this occasion, it appeared to be the intention of the government to allow the present bill to be brought in. (Hear.) After that speech,

he could not see the use of consuming another night in discussing the merits of the bill. (Hear, hear.) The County Courts had hitherto worked well, but he felt as sure as that the sun was in the heavens that if they extended their limits as now proposed, they would entirely knock them up. (Hear, hear.)

Sir G. Grey said, that the doubts entertained by his hon. and learned friend the Attorney-General referred not so much to the expediency as the practicability of the measure, and that was the reason he was not prepared at once to move its rejection. He (Sir G. Grey) stated last year the grounds upon which he opposed the proposition for the extension of the jurisdiction of the County Courts from 20*l.* to 50*l.* He still entertained the opinions he then expressed. At the same time it was impossible to deny that there was a strong feeling in the country in favour of the extension of the jurisdiction, (loud cries of "Hear, hear,") and he thought the house would discuss the measure with much greater advantage when they had the bill before them, not as last year, containing the mere substitution of 50*l.* for 20*l.* as the limit of the jurisdiction, but accompanied by a right of appeal, the nature of which, however, the hon. member had not yet stated, and with the admission of a bar, also, as he understood the hon. member to intimate during the time the Attorney-General was speaking. He (Sir G. Grey) believed that the popular favour in which the County Courts were held had arisen from the fact that justice was administered in them under circumstances which were only compatible with the existence of a small stake. (Hear, hear.) With reference to the right of appeal which the hon. member now proposed to allow in regard to sums between 20*l.* and 50*l.*, he (Sir G. Grey) owned he was curious to see how that was provided for in the bill; whether the appeal would involve a new trial in the Court where the former trial took place, or whether it would be transferred to the Courts at Westminster; for if so, the whole value of the County Courts would cease; for he feared the result would be, that however the cases were decided, the losing parties would always appeal. (Hear, hear.)

Mr. H. Berkeley entertained great doubts whether the bill now proposed was calculated to produce any advantage to the country. On the contrary, he feared its effect would be to interfere with the well-working of the present act. He doubted also whether it would be possible to admit a bar into these Courts without altering the nature of the judges. He hoped, therefore, the government would not agree to the bill becoming law.

A RIVAL TO THE COUNTY COURTS' EXTENSION BILL.

A CORRESPONDENT has sent us a bill which he recommends as more just and true in principle than the one now before the House of

Commons. He describes it as a Bill "to extend the Jurisdiction of the Act for the more easy Recovery of Small Debts, &c., of large amount, and to amend the same by making things worse, if possible."

"WHEREAS, by an act passed in the tenth year of the reign of her present Majesty, intitled 'An Act for the more easy recovery of Small Debts and Demands in England,' opportunity is given, as it has been discovered, for 'smart tradesmen,' tally-men, and others, to entrap poor people—receiving weekly all they earn, and having no business to take credit—first into debt, and then into gaol, and jurisdiction is given to certain County Courts for the recovery of certain debts, which should never have been contracted, and not exceeding 20*l*. : And whereas, the Court of Common Pleas has very little to do, and the Court of Queen's Bench and Exchequer have barely sufficient to do, and the County Courts have, in the opinion of most people, done and are doing a great deal of mischief which would have been better left undone; and as the last mentioned Courts have no time to spare, it is clearly desirable that their business should be increased, and, their law being very so-so and conflicting, it is considered 'expedient' by some man that society should have more of it: And whereas it is thought 'expedient' by some man that other men should regard 50*l*. as a 'small' debt, and that the some man in question should be so far indulged in his croquet, that the other men should submit their claims, and risk their debts, not exceeding 50*l*., to a five minutes' investigation by some questionable or notoriously bad lawyer of some one of the County Courts: Be it therefore enacted, *not* by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and the Commons, but without any Majesty at all, and without any advice or consent worth a button, and in defiance of all authority, sound policy, and experience, that the jurisdiction of the several County Courts shall extend to the recovery of all debts, &c., not exceeding 50*l*.

"2. And whereas it is thought 'expedient' by some man that *appeals* should be allowed against the sound and brilliant decisions which may, naturally enough, be expected from those who are to preside over the fate of our fifty-pound 'small' debts, and it is thought 'expedient' that the judges who make such decisions should be the judges of the expediency of appealing against them, and it must be clear that such judges would be very bad judges—indeed—even worse judges than we take them for—and not over-bright fellows, if they saw it 'expedient' to allow any such appeal at all, and therefore no appeal will find its way to Westminster before the judges of the Superior Courts, and those venerable and learned personages, who really do know something about law, will have nothing whatever to do; and the numerous officials belonging to those institutions will be in the same predicament: Be it

therefore enacted, that the said officials shall be and are hereby created Masters of themselves, and of their own actions, and that the judges of the said Superior Courts shall attend together, in their robes, once each term time, at the British Museum, for the inspection of all curious antiquarians.

"3. And by way of promoting economy: Be it enacted that nothing herein contained shall exempt the said officials or the said judges of the Superior Courts, from discharging the duty of receiving their respective salaries.

"4. And whereas a large and respectable body of men has been reared, at considerable cost of time and money, for the purpose of assisting in administering the laws of the land, and these practitioners have had from time to time, and at all times, to pay through the nose pretty smartly to her Majesty's Exchequer, and have by their counsel and conduct served, as a body, most faithfully at all times the state; and it was thought 'expedient,' by the shabby fellow who penned the act before referred to, that these practitioners should be entitled to few shillings for getting up and conducting the law suit; and it is now thought 'expedient' that these practitioners and their costs should be got rid of, even at the sacrifice of society and its debts, and that every man should become his own lawyer, and as litigious a spirit as possible should be promoted amongst the people, and that the lovers of cheap, questionable, and irresponsible law, should have 'for ever' of it: Be it enacted, that it shall be lawful for the said practitioners, from and after the passing of this bill, to absent themselves from Westminster, and their 'occupation gone,' their sole remaining privilege shall be to go about their business; and that they shall respectively receive, by way of starting them off again, a cheque on her Majesty's Exchequer for the total amount they have respectively paid for stamps, taxes, and certificate duty.

"5. And be it enacted, that this bill may be amended by any gentleman who fancies that he can improve the same.

"Schedule of Fees.

"To go, as the others did, all to the Court and its officers—save the ten shillings to the attorney."

OBJECTIONS TO THE FEES IN THE COUNTY COURTS.

INJUSTICE TO THE PROFESSION.

To the Editor of the Legal Observer.

SIR,—It is absolutely necessary for the good of the constitution to keep up the Bar and the Attorneys of England, and not to permit one judge, one clerk, and one bailiff to transact the business of a Court of Justice, and to decide what they, and they only, think is right and just.

Under the 9 & 10 Vict. c. 95, there is no practice for attorneys in the district County Courts, their appearance there being only allow-

ed as amateur, counsellors or advocates, as if in derision to supersede the Bar of England, and for all their advice, care, society, benefit, advantage, attendance, and advocacy, they are not to be paid by the unsuccessful party more than 15s.

The ancient County Courts are Common Law Courts, and are not abolished by the New County Courts' Act.

Until recently, the judges were paid by the fees, but now they are paid by a fixed salary of 1,000*l.* a year,—the fees being taken by the Treasury.

At present, in every case whatever, the judge's fee is taken, not only on the summons and on the hearing, but on every order, every judgment or application for an order, so that if an application is made to a man and a defendant out of the jurisdiction, a judge's fee is taken for that even.

For a debt above 10*l.* the judge's fee on application is 3*s.*—on summons, 3*s.*—on hearing, 10*s.*—on judgment, 3*s.*—on order, 3*s.*—making 1*l.* 2*s.*

At present, in every one of the cases in the Court, the CLERK, and he only, though practising professionally in the town as well, takes a fee on every summons, every hearing, every judgment, every order, every entering, every subpoena, every APPLICATION, every swearing, every notice, every payment, every search, every withdrawal, every taxing, every inquiry, and EVERYTHING that the fees can be split into.

At present, in every one of the cases in the Court, the BAILIFF, and he only, and though practising professionally as a conveyancer, takes a fee on every calling, every affidavit, every service, every summons, every order, every subpoena, every execution, every warrant, every precept, every attachment, every possession, every detaining, every carrying delinquent, every warrant to another county, and EVERYTHING the fees can be split into.

An ATTORNEY, if he is lucky enough to be employed, can have no fee if the debt is under 5*l.*, and one fee only of 15*s.*, although wasting all day in Court, whilst in every one of the many hundred cases the clerk and bailiff each pocket as much and more in each than an attorney gets for all his day's loss of time.

BARRISTERS AND ATTORNEYS are, at a great expense, educated for the law, by which alone they can obtain a living, and attorneys, to be entitled to practise, have a stamp of 120*l.* on their articles to 'pay,' as well as serve five years, and also a stamp of 25*l.* on their admission, besides a yearly certificate of 8*l.* or 12*l.* Considering all these things, is it not unjust to the attorneys, as part of the public, that any act of parliament should give a MONOPOLY of the practice and business of a Court of Justice to one clerk and one bailiff only? Besides which, is it not a great question, whether such a proceeding is not unconstitutional and contrary to Magna Charta?

If the judges of the Superior Courts were to administer the justice of the land by their own clerks and bailiffs of the Court, what would be-

come of our boasted freedom and liberty? and again, where would the present Bar now be?

If a trade or business is to be made out of issuing summonses and proceedings of a Court of Justice, by the constitution it belongs to that part of the public who give themselves up by education, stamps, and certificates, to it, and to it only.

The County Courts' Act gives a greater power to the judge of its Court than to any judge of the land,—for the County Court judge sits and decides, and his decision cannot be called in question.

Let an ATTORNEY have ever so small a fee, for obtaining the summons and serving it, and doing the other proceedings of a County Court, or let a BARRISTER have ever so small a fee for advocating a man's cause, whether of debt or otherwise, still the laws should not deprive either of that freedom of action in getting a livelihood, any more than that any act of parliament should say that such and such tradesmen should not sell the articles of their trade, but one man only.

I take the liberty of writing this, in the hopes that now the New County Courts' Act is under consideration, the constitutional law will be preserved, and that if the laws are to be constantly changed, that they be changed for the public, and not for private interests.

J. B.

OBJECTIONS TO THE COUNTY COURTS' EXTENSION BILL.

INJURY TO DEFENDANTS.

To the Editor of the Legal Observer.

SIR,—The County Courts' Extension Bill has in it the following clause, (4.)

"By leave of the Court for the district in which the plaintiff shall dwell or carry on business, or shall have dwelt or carried on business within six calendar months next before the time of the action brought, such summons may issue in such last-mentioned Court."

This is in fact a plaintiff's Court, for if such a clause were to become law, every common man would be ruined. Only fancy, out of 360 different district Courts about England, the idea, that a man could be summoned to any district where a plaintiff resides—or even worse than that, where he has not left it six months.

A man by this way may have several summonses served on him for several different district Courts on the same day, and 100 miles or more apart.

At London, Manchester, Birmingham, and all other large towns, there are thousands of persons who send out their travellers through the country to the different towns and villages to get orders, and whether they get them or not they send the goods.

Now only consider, not only these men, but any one man, having the power to summon a man, whom he alleges to be his debtor, to some hundreds of miles to defend himself,—is that

justice? is that doing to a man as he would be done by?

Hawkers, pedlars, and others, being in towns, go daily into the villages and supply people on credit, and if they had the power of summoning such persons to their own districts, they would ruin them by the expenses and distances; they would not only claim debts and demands, knowing by the distance the people would not defend themselves, but they would summon any branch of the family they thought could pay. If widows, executors, and administrators living in small places, were summoned miles from home, they would not be able to defend themselves, whereby they would be cast for want of appearing.

The principle of the power given to the County Court Judges was, to grant to debtors time to pay; but how are they to know the defendants' circumstances unless the defendants are present—the object is to give judges, clerks, and bailiffs more fees.

I now beg your earnest attention to the "by leave of the Court" system,—this is a most iniquitous affair, for when the act now in force was passed, no one ever thought that where a creditor applied to summon the debtor out of the jurisdiction, the clerks would make it the means of heavy fees to fall on the defendant, besides the fees of being summoned; but so it is, as the inclosed will show—2*l.* 12*s.* taken for fees of the bare summons; besides this, 2*l.* 18*s.* 2*d.* to follow for the fees on a hearing.

If the plaintiff is to have the power to summon a debtor to his own Court, why need it be put "by leave of the Court," except for adding the enormous fees of the order?

The ambiguity of the new bill and the fees, are so monstrous, that it shows there is but one purpose in trying to pass it, and that is, to serve the purposes of the officers of the Courts; for in case of appeal they have quite forgot an appeal for the plaintiff,—supposing, of course, that he would never lose, and therefore an appeal was not wanted for him.

ENORMOUS FEES.

Your earnest attention is directed to the enormous new and heavy fees of the new bill; according to the mode the clerks are now charging, their fees alone will come to 20*l.* 0*s.* 9*d.* for a plaintiff to pay on summoning, and the trial of a case from 40*l.* to 50*l.*, 9*s.* is actually put down for taxing costs, and no costs to tax but their own fees. Please examine the schedule, and did you but know how the clerks and bailiffs use that list of fees, you would be mortified to think that they could have so much avarice, more especially as they are telling the people they are to have cheap justice.

J. B.

The petitions to parliament are got up entirely by the County Court Clerks; they copy them out, and send their little clerks and boys, and the bailiffs do the same, and they call upon every tradesman, and ask them to sign. I can assure you, there is not one petition, a voluntary

petition, got up by the tradesmen themselves, but that the whole of the petitions emanate from the County Court officers, and if parliament would please to institute an inquiry, this would be proved to be the case.

NOTICES OF NEW BOOKS.

The Practical Man; or Legal and General Pocket Companion. Giving nearly 300 carefully prepared Forms in Legal Matters requiring prompt attention, and a complete collection of Tables and Rules applicable to the Management of Estates and Property, and the Calculation of all Values dependent on Lives, Reversions, Terminable Payments, &c. "With County Court Practice and Forms," "New Bankruptcy Forms," "Malt Duty Return Proceedings," Tables Remodelled and extended Generally, and the insertion of New Tables of the value of two Joint Lives, according to the Government probabilities of life, and distinguishing Male and Female lives. Sixth Edition. By ROLLA ROUSE, of the Middle Temple, Esq., Barrister-at-law, author of "Copyhold and Court-keeping Practice," "Mortgage Precedents," &c., &c. London: W. Maxwell, (late A. Maxwell & Son.) 1850. Pp. 324.

THE present edition, compared with the first four editions, may be considered a new work; and material improvements are made on the Fifth Edition,—especially the introduction of *County Court Practice and Forms*,—*new Bankruptcy Forms*,—*Proceedings for return of Malt Duty*; many additional Rules in Part II.; an entire remodelling and great extension of the Tables applicable to that part, and the insertion in Part III. of *Tables of the Values of Joint Lives according to the Government probabilities of Life; distinguishing Male and Female Lives*, with several other Tables and Rules.

The Tables of Joint Lives have been prepared with great labour, and are given under the belief that they will be found of extensive use, as being the only Tables which give correct values of male and female lives, where joint lives or survivorships are concerned; and according with the Table at four per cent. on single lives, published in the Report of Mr. Finlaison, the Government Actuary.

In offering the present edition to the public, it may not be inapt to suggest that the work would be serviceable to—

Members of the Bar on circuit; not

merely in the application of the legal Forms, but in the numerous instances where an acquaintance with general computations and measurements, and with the mode of solving questions relative to terminable interests and reversions, or dependent on the value of lives and survivorships, will be found of great advantage, in the conduct of cases at *Nisi Prius*.

To *Solicitors*, every part of this work will be found extensively useful in practice. *Part I.*, gives forms and instructions, not only available, when reference cannot be had to other books, but which from the great pains bestowed in their preparation, will, it is trusted, be found equally serviceable when the books are at hand. *Part II.*, gives fully and simply the information required in the management of estates and property,—a class of business frequently in the hands of *Solicitors*, and which might with equal advantage to the *Solicitor* and client be greatly extended. *Part III.*, will enable *Solicitors* to estimate the value of all interests which are terminable or reversionary, or dependent on the value of lives, and to advise their clients on the expediency of any proposed transactions in relation to such interests, without subjecting their clients to the expense of consulting others, and in many cases to unpleasant publicity.

In *Life Assurance Offices*, the work will be found to give information, which may enable an Actuary to have much work done by clerks, which would otherwise require his personal attention; and the value in such offices of the *Tables of two Joint Lives according to the Government probabilities of Life*, and giving separately the *Male and Female Lives*, need scarcely be enlarged on.

To *Landed and other Proprietors*, *Parts II.* and *III.*, will give fully, and yet simply, the Rules and Tables applicable to the general management of property, and estimating the value of interests which are terminable or reversionary, or depending on the value of lives. The work will also be useful as a book for the library, to be handed to a solicitor who may be required, without previous instruction, to prepare an agreement or will, or other legal document.

To *Valuers and Estate Agents*, *Part II.* will give in a much more condensed and clear manner than in any other work, the Rules and Tables required in general measurements and computations, with many rules and tables not obtainable elsewhere; and *Part III.* will give full information required in estimating the value of all termin-

able, reversionary and life interests; and as respects the latter, where more than one life is concerned, the new Tables give the correct values according to the Government probabilities, never before published, but absolutely essential in order accurately to estimate life interests.

The following is an outline of the contents of the present edition, the principal additions being in italics:—

“PART I.—LEGAL FORMS, &c.—Acknowledgments, Affidavits and statutory Declarations; Agreements, Arbitrations, Bail, Bankruptcy (*new forms*), Bills of Sale, Bonds, Cognovits, Conditions of Sale, *County Court Practice, with twenty-three Forms, and lists of Fees*: Debtor and Creditor Deeds, Distresses and Replevins, Guarantees, *Proceedings for Return of Malt Duty*, Note of Hand with Surety, Notices (forty-four in number), Partnership memoranda, Powers of Attorney, Releases, Riot Damages, Undertakings, Warrants of Attorney, Warranty of a Horse, Wills, including suggestions for their preparation, abstract of Wills' Act, seventy-eight Forms, and eleven outline Wills; and remarks on, and full lists of Stamps.

“Tables of the distribution of an intestate's personal estate, and of inheritance to real property under the old and new law, are also given at the end of Part III. (Nos. 73 and 74.)

“PART II.—MEASUREMENTS AND GENERAL COMPUTATIONS.—Rules and Tables for Measuring Surfaces, Contents and Distances generally, including the Measurement to and between inaccessible objects; Roofs and Thatchers' work, Contents and Weight of Sacks, Contents and Loads per Acre of Manure; Contents of Timber and Wood, Cisterns, Tanks and Casks; Weight of Cast and Wrought Iron, Sheet Lead, Bar Iron, Lead and Iron Pipes, &c.; Weight and Contents of Coppers; Artificers' work generally, and particularly as to Masons, Carpenters and Joiners, Plasterers, Bricklayers, Slaters and Tilers, and Painters, Plumbers, and Glaziers; also forty-five Tables, many new, and the others, with but two or three exceptions, remodelled and extended, and the additions comprising several Trigonometrical Tables of great utility.

“PART III.—PROPERTY AND LIFE VALUATIONS, &c.—Introductory Remarks and Instructions, Estates, part Freehold and part Copyhold; Freehold, Copyhold and Leasehold for Years or Lives; Annuities on a single Life or on any number of Joint Lives or Survivorships; the like Deferred, or determinable on Life or Lives; Reversionary Annuities, Apportionment of interest in Annuities, Reversions and next Presentations, Successive Lives and Presentations, Deferred Payments, Leaseholds for Years or Lives, Rent to pay named per Centage, beneficial Values of Leases, additional Rent equal to Premiums; renewing or adding Life in Copyholds, Church, Collegiate and other renewable Leaseholds; Copyhold En-

franchisements, Accumulations of Sum or Yearly Sums, Value of Life Policies or surrendering Bonus on a Life Policy; Yearly, Half-yearly, and Quarterly Payments; Interest, Income, and Salaries, Property Tax, Rate of Interest on Investments in different Stocks; also on Purchase or Sale of Leaseholds and Annuities for Years certain; Interest on Leaseholds equal to Perpetuity of 4 per cent., &c. &c.

"At the end of the work are twenty-seven Tables (Nos. 46 to 72), relating to Part III., most of them remodelled and extended, and including amongst them the very important Tables of the values of two joint lives, before referred to.

"In the last Edition, Deparcieux' Tables of Joint Lives were given, as those approaching more closely to the correct values than any other published Tables, and consequently the best which could be then given; but the difference between the value of male and female lives being very considerable, and Deparcieux' Tables combining the lives, it has long been desirable that Tables giving separately the value of male and female lives should be published.

"From the great increase in the number of calculations, by thus separating the values, it being four-fold where the ages differ, and threefold where equal; and life calculations being necessarily complex and laborious, and requiring great care in revision; no such Tables have hitherto been published, except that for single lives at 4 per cent., given in Mr. Finlaison's Report, and the condensed Table applicable to joint lives in certain cases, given in the last edition of this work.

"The value of such Tables has induced the author to prepare and now give the Tables required, and it is confidently hoped that their utility may equal the pains taken in their preparation.

"Some difficulty has been experienced in compressing the information given within so small a volume as the present; but by adopting contractions, and by economising space to the utmost, the size of the last edition has been but little exceeded in the present."

FEES OF MAGISTRATES' CLERKS.

We are enabled to add to the brief report of the case of "*Wray v. Chapman*," p. 387, *ante*, the following more accurate and complete statement of the facts of that case:—

It was an action by Mr. Wray, the Receiver of the Metropolitan Police, against the Clerks to the Justices for the Richmond Division, to recover the amount of certain fines imposed by those justices, and which, by the Police Acts, are payable to the Police Receiver.

The objection of the clerks to make this payment was, that the Police Commissioners were indebted to them for fees justly due on applica-

tions made by their officers for summonses, warrants, &c., on informations laid by them, and which were on the hearing dismissed, or the defendants were too poor to pay the fine and costs, and were sent to prison in default, or were adjudged imprisonment in the first instance. These claims were denied—and the action commenced—but as the clerks persisted in demanding their fees, it was agreed to turn their action into a special case.

Upon the argument it was attempted to show, that the police, as public functionaries, had a right to have their business done by magistrates' clerks for nothing. It will be seen that the Court repudiated that doctrine, but; upon the question submitted to them; they gave judgment for the plaintiff, because, although it was quite clear the clerks were entitled to receive them, and might demand them from the officers at the time, there was nothing in the Police Act that made Mr. Wray, the Receiver, liable to pay them.

The case therefore establishes the important principle, that peace-officers are not to demand the assistance of the magistrates' clerks gratuitously; and it applies to county and parish constables as well as to those within the police district.

In these times, where attempts are making on all sides to reduce the emoluments of attorneys, it may be interesting to that large and respectable portion of them, the magistrates' clerks throughout the kingdom, to know they are entitled to demand fees from public officers as well as private persons.

COUNTY COURTS' COMMISSION.

We understand that the Commissioners for revising the Rules of Practice have already entered upon their duties. Copies of the present Rules of Practice and Forms have been printed and sent to the several Law Societies and other professional bodies, for the purpose of obtaining their suggestions for the improvement of the profession. This is a very judicious course of proceeding in order to collect the fullest information and enable the Commissioners to make a satisfactory report.

A. N., a subscriber, says "he was about sending a few suggestions for improving the County Courts, but on looking at the 12 & 13 Vict. c. 101, s. 12, it appears that the Commissioners appointed by the Lord Chancellor under that section have no an-

authority to frame general rules and orders, except where there have been doubts or conflicting decisions."

We understand the judges, appointed to consider the rules, are willing and desirous of receiving all suggestions for the improvement of the Courts,—some of which may probably require the sanction of parliament. We trust, therefore, our correspondent will send in his suggestions, whether within the scope of the 12th section or not.

MIDDLESEX REGISTRY OF DEEDS.

PROPOSED IMPROVEMENT.

To the Editor of the Legal Observer.

SIR,—I do not know whether any of your subscribers have noticed, what practical conveyancing lawyers must have seen, that the searches at the Registry Office for the County of Middlesex, in very many cases, are now becoming a very laborious duty to perform; but having had rather a comparatively short search of five years to make very lately, and which turned out otherwise in consequence of the references to dealing by the same party with property in the same parishes having been most frequent, I was induced to note that some other gentleman had been over the same ground before me, and he had very kindly scored in pencil underneath the number and description of each house of which the memorial purposed to be a register.

You may say that it is not quite fair to name what it is well known the authorities would not allow, if they knew of it or saw it being done; but finding this saved me some considerable time in not having occasion to refer to the other parts of sometimes a long memorial, I am induced to trouble you with the suggestion in the hope that some such a regulation could be adopted by the Registry Office clerk when he is suppressing the memorials, by marking under the exact description, number, or name by which the property is fully known and which is the subject of the memorial registered, in red ink or otherwise, as might be found most convenient to the authorities to adopt, and which, I have no doubt, would be received with very great thankfulness on the part of the profession, as it would tend very much to shorten the laborious search and reference into the many, and sometimes unnecessarily long memorials.

E. C.

GAZETTE OFFICE CHARGES.

To the Editor of the Legal Observer.

SIR.—The extravagant charges and vexatious regulations of the Gazette, are so burdensome to the profession, that an effort to procure their reform is most desirable, and the present seems a favourable opportunity for mooted the matter.

The charges for insertions are after the rate

of 15s. 6d. for the first 10 lines, and 11. 5s. 6d. up to lines, and so on. Now, why should this exorbitant charge be allowed? If government requires certain matters to be advertised in a particular and official document, it behoves it to provide for its being done at a reasonable rate; and if the daily papers can afford to make these insertions for half the money, surely the Gazette, which enjoys a monopoly, can better afford it. Again, why is the price of a Gazette to be kept up at 2s. 8d. when the Times is sold for 6d.

But an equally vexatious matter is, the restriction on advertising by the unusual caution of the Gazette officer to protect himself from actions of libel, &c., by requiring the most minute documentary proof of signatures, authority, &c., such as is not required by the daily papers, which are much more exposed, and which, besides putting the parties to great and unnecessary expense, often amounts to an absolute prohibition of the insertion.

Any suggestions from your readers as to the best mode of effecting a modification of these grievances will be thankfully received by

A SUBSCRIBER.

NOTES ON THE CIRCUIT.

ADDRESS OF THE GRAND JURY OF LINCOLNSHIRE TO LORD DENMAN.

AT the Assizes at Oakham, on the 8th inst., the Grand Jury presented to Mr. Baron Parke the following address:—

"My Lord,—Before the Grand Jury are discharged, they desire to express to your lordship the deep regret they experience, in common with the county at large, at the absence of Lord Denman from these assizes, and the melancholy cause of that absence. My Lord, nearly half a century has passed away since that noble and learned lord commenced his connexion with this county as a barrister. In this character, among many able competitors, he acquired to himself the highest reputation as an advocate, and at the same time, by his social qualities and high tone of mind, won the affection of all who came in contact with him. Nor did the promise fail, held out by his earlier efforts at the bar. Step by step professional honour flowed in upon him, and in the year 1832 we had the gratification to see his lordship raised to the highest common law seat, and as Lord Chief Justice of England taking his place among the peers of the realm. Since his elevation, his lordship has frequently done us the honour to preside in this Court, and we have often remarked in the judge the same qualities we admired in the advocate, the same inflexible integrity, the same commanding eloquence, and in manner the same combination of dignity and kindness. My Lord, we cannot contemplate the retirement of such a judge, so long endeared to us, without feelings of deep and sincere grief. We desire to assure the noble and learned Lord that his memory will long be cherished in this county with

grateful and affectionate regard, as we hope his example will be followed by those who aspire to emulate his bright career. We trust that many years of renovated health and happiness are yet before him, that he may enjoy the pleasing reminiscences of a long course of high and arduous duties, faithfully fulfilled, and of having earned thereby the highest reward of a public man, the fair fame which this country is ever ready to award to independence and a love of truth, whether evinced at the bar or on the bench of her Courts of Justice."

The learned Judge said he would take care to forward it to his lordship. He himself participated entirely and cordially in every word of it. Lord Denman, he was sure, would receive it with the gratification which always follows upon praise deserved.

NOTES OF THE WEEK.

ATTORNEYS AND SOLICITORS IN IRELAND.

Mr. Hamilton, the member for the University of Dublin, has given notice of a Bill for the better regulation of the Profession of Attorney

and Solicitor, and incorporating the Society of the Attorneys and Solicitors in Ireland.

We presume that the bill will provide for the examination and registration of attorneys as in England.

SINECURES AND PATRONAGE IN THE COURTS OF LAW.

Mr. Mullings has given notice of an Address for "Return of all Offices of Emolument in the gift or at the disposal of the Judges, and of each or any hereditary or Life Functionary of the Courts of Queen's Bench, Common Pleas, and Exchequer, respectively; the names of the persons now holding those several offices, with the dates of their appointments, and the salaries, fees, or emoluments of or appertaining to each office; also, the tenure under or the time for which such persons hold their several offices, and the nature and extent of the duties attached to each office."

LAW APPOINTMENT.

HER Majesty has been pleased to appoint *George Garcia, Esq.*, to be her Majesty's Solicitor-General for the Island of Trinidad.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Bagshaw v. McNeil. Feb. 9, 11, 1850.

BILL FOR SPECIFIC PERFORMANCE.—CONTRACT TO PURCHASE LAND.—TITLE.—APPEAL.—COSTS.

Upon appeal from the Vice-Chancellor Wigram, on a bill for the specific performance of a contract to purchase certain lands recovered from the sea, the plaintiff was held to have shown a good title, and a reference was directed to the Master to approve of a conveyance, and the appeal dismissed with costs.

THIS was a bill for the specific performance of an agreement to purchase the plaintiff's interest in certain lands recovered from the sea at Lough Swilly, in the county of Donegal, Ireland, under the 1 & 2 Vict. c. lxxxvii. The defendant pleaded that a good title had not been shown. The Master having reported against the title, and the Vice-Chancellor Wigram having allowed the exceptions to such report, this appeal was presented.

The *Solicitor-General* and *Bigg* for the plaintiff; *Wood* and *Webster* for the defendant. The Lord Chancellor held, the plaintiff had shown a good title, and referred it back to the Master to approve of a conveyance, and dismissed the appeal with costs.

Hirst v. Tolson. Feb. 27, March 2, 1850.

ATTORNEY.—ARTICLED CLERK.—DEATH OF MASTER.—RETURN OF PROPORTION OF PREMIUM.—REFERENCE.

Held, affirming the decision of the Vice-Chancellor of England, with costs, that an arti-

clerk to an attorney is entitled to recover a proportion of the premium paid against the executors, where the master dies before the expiration of the term of articles; and a reference was directed to the Master to ascertain the amount to be returned.

THIS was an appeal from the Vice-Chancellor of England. The bill was filed by Sarah Hirst, widow, and Henry Hirst, her son (a minor) against the executors of Richard Tolson, an attorney, of Bradford, in Yorkshire, to recover a proportion of the premium of 200*l.*, which had been paid upon the plaintiff's son being articulated for five years to the deceased, in November, 1845, out of the assets of their testator. Mr. Tolson died in October, 1847, and his executors, having arranged with the testator's partner to take the plaintiff's son for the unexpired term of the five years, without premium, refused to return any part of the 200*l.* The plaintiff had engaged another attorney to take her son for the residue of the term, in consideration of such proportion of the premium paid to Mr. Tolson as should be returned by his executors, and various applications to the defendants for the return of 120*l.* as the proportion to be returned not having been complied with, the present bill was filed. The Vice-Chancellor of England having directed a reference to the Master to ascertain the proportion to be returned, this appeal was presented.

Roll and *Rogers*, for the plaintiffs, cited *Soam v. Bowden*, Finch, 396; *Hale v. Webb*, 2 Bro. C. C. 78; *Newton v. Rows*, 1 Vern. 460; Eq. Ca. Abr. 308, pl. 3; *Ex parte Sandby*, 1 Atk. 149.

R. Palmer and Amphlett, for the defendants, contended that the plaintiffs could only recover at law, and referred to *Espartero Frankford*, 3 B. & Ald. 287; *Cuff v. Brown*, 5 Price, 297; *Wadsworth v. Gye*, Sidar. 216; 1 Koble, 297; *In re Thompson*, 1 Exch. R. 864; *Argles v. Heaseman*, 1 Aik. 518.

The Lord Chancellor said, that the bill disclosed a clear case for relief at law or in equity, and it was useless to put the plaintiffs to the expense of an action at law when they would have afterwards to come back to this Court. The right of the plaintiff to a return of a proportional part of the premium was a debt on the testator's estate. The Vice-Chancellor had therefore rightly referred it to the Master to ascertain the amount so to be returned, and the appeal would be dismissed with costs.

Master of the Rolls.

Londonderry and Enniskillen Railway Company v. Leishman. March 4, 1860.

ABSTENTION.—AWARD.—BILL TO SET ASIDE.—DEMURRER FOR WANT OF EQUITY.—COSTS.

A demurrer for want of equity was allowed, with costs, to a bill to avoid an award, where, under the contract, a Court of law was empowered to refer back to the arbitrator the matters in difference, if either party should be dissatisfied therewith.

THIS bill was filed against the defendant, James Leishman, praying a declaration that the award and final certificate of Mr. Lock, the arbitrator under a contract for furnishing materials for and completing the plaintiffs' railway, had been obtained by fraud, and for an account of the works done and materials supplied, and the prices to be allowed under the contract, and of all monies paid on account thereof. By the terms of the contract, it was agreed that in case of dispute it should be referred to an arbitrator, his award to be made a rule of Court, with power to either party who should be dissatisfied therewith to apply to the Court of which it was made a rule for a reference back to the arbitrator. The award having been made, this bill was filed for the above declaration and for an injunction to restrain the defendant from enforcing the award.

Roundell Palmer, Selwyn, and *Mellish* appeared in support of a demurrer for want of equity, on the ground that the plaintiffs had ample remedy at law under the contract.

Walpole and Hetherington, contra.

The Master of the Rolls allowed the demurrer, with costs. The parties had selected a special mode by the contract to settle the disputes, and that there should be a reference back to the arbitrator in case of dissatisfaction with the award, and the plaintiffs had therefore adequate relief at law.

March 16.—*Carlisle v. South-Eastern Railway Company and others*—Stand over.

March 16.—*Howard v. Prince, Prince v. Howard*—Cur. ad. vult.

— 17, 19.—*Attorney-General v. Dalton and others*—Part heard.

Vice-Chancellor of England.

In re Port of Wisbeach Company. March 7, 1850.

WINDING-UP ACT.—COMMITMENT FOR CONTEMPT.—SUBPENA TO APPEAR BEFORE MASTER.

An order was made for the commitment of a party to the Queen's Prison, who had not attended the Master in obedience to a subpoena, under the 11 & 12 Vict. c. 45, s. 63.

THIS was a motion to commit to the Queen's Prison, under the 11 & 12 Vict. c. 45, s. 63, Henry Brooks, who had been served with a subpoena to appear before the Master, to whom the matter was referred, but had not attended in accordance therewith. The 63rd section of the 11 & 12 Vict. c. 45, enacts, that "it shall be lawful for the Master to examine every such person upon oath," &c., "and every such person who shall not come before the Master, or shall refuse to be sworn," &c., "shall be liable to be committed to the Queen's Prison: Provided always, that every such default or refusal shall be certified by the Master, and thereupon, such order shall be made by the Court, upon motion for that purpose."

Glaspe, in support.

The Vice-Chancellor made the order as prayed.

March 13.—*Pico v. Henry*—Injunction to restrain defendant from selling cigars in boxes bearing the plaintiff's name thereon.

— 14.—*Lee v. Austin and another*—Order to set aside award.

— 15.—*In re East Anglian Railway Acts, ex parte Corporation of Godmanchester*—Order for payment of purchase-money out of Court to corporation.

— 15.—*Courtenay v. Lord Devon*—Reference to the Master as to exchange, &c., of trust lands.

— 15.—*In re Leeds and Thirsk Railway Company, ex parte Rectory of Kirkby, Overblow*—Order for investment of purchase-moneys of glebe lands, without service on company.

— 14, 15, 16, 18, 19.—*Duke of Leeds v. Earl Amherst*—Cur. ad. vult.

— 13, 14, 19.—*Corporation of Liverpool v. Chippendale*—Motion refused to extend common injunction to stay trial after exceptions to answer allowed by Master.

Vice-Chancellor Knight Bruce.

In re Kollman's Railway Locomotive and Carriage Improvement Company. Feb. 23, 1850.

WINDING-UP ACT.—JURISDICTION OF MASTER.—SUBSTITUTED SERVICE.

The Master has jurisdiction, under the 11 & 12 Vict. c. 45, s. 46, to order substituted

service in cases where the party cannot be personally served.

MASTER KINDERSLEY, to whom this matter was referred, having doubts whether he had authority under the 11 & 12 Vict. c. 45, to direct substituted service on a person who could not be personally served.

Glasse now asked the opinion of the Court thereon.

The Vice-Chancellor said, that under the 11 & 12 Vict. c. 45, s. 46, the Master might direct such substituted service.

Whitmarsh v. Smith.—March 6, 1850.

MARRIAGE SETTLEMENT.—**REFORMING.**—**INTENTION OF PARTIES.**

A marriage settlement was reformed in accordance with the intention of the parties, which appeared from the recitals, but was not carried out through mistake in the covenants.

THIS bill was filed to reform the plaintiff's marriage settlement, from the recitals of which it appeared that it was intended to bring into settlement all property coming to the plaintiff during her coverture, but by mistake the covenant extended to all property devolving upon her during her life. The husband had since died.

Bird for the plaintiff; *Townsend* for the defendant, an infant interested under the settlement.

The Vice-Chancellor made the decree accordingly.

March 13.—*Humphreys v. Wadsworth*—Injunction to restrain the solicitor of loan and discount society from interfering with the affairs of the society.

—13.—*Hawkes v. Eastern Counties Railway Company*—Decree for specific performance, with usual references as to title.

—13.—*Ex parte Jones, in re Jones*—Petition for discharge of bankrupt from gaol referred back to Commissioner.

—14.—*Burgess v. Hall*—Injunction to restrain sale of plaintiff's composition or using similar labels.

—14.—*Whittingstall v. Wright*—Injunction *ad interim* granted, restraining the erection of a gate obstructing road to plaintiff's collieries.

—16.—*In re Madrid and Valencia Railway Company*—Stand over.

—16.—*Ex parte York and Lancaster Railway Company*—Stand over.

—16.—*In re Worcester, Tenbury, and Ludlow Railway Company*—Order made for payment of fund out of Court to shareholders, there being no debts.

—18.—*Ex parte Woodford, in re Woodcock and others*—Sum of money held to have been the exclusive property of assignees.

—18.—*Ex parte Sadler, in re Parker*—Order for delivery up of possession of premises, with leave to bankrupt to apply specially to Commissioner for indemnity.

—19.—*Hamilton v. Rankin*—Bill dismissed with costs to set aside award.

Vice-Chancellor Wigram.

Jones v. How.—Feb. 13, 1850.

ISSUE AT LAW.—NEW TRIAL.—REASONS OF CERTIFICATE.—CREDITOR'S BILL.—COSTS.

Held, that where a Court of Equity is satisfied with the conclusions of the certificate of a Court of Common Law upon a case directed, such certificate will be confirmed; and the fact of no reasons for such conclusions being stated is insufficient *per se* for directing another case.

Held, also, that where a creditor's bill is dismissed, it will be dismissed with costs.

WILLIAM WAY, upon the marriage of his daughter, in 1826, with the plaintiff, covenanted, in consideration of such marriage and of the settlements made by the plaintiff, by deed or will to give his daughter an equal eighth part, or such share as should be an equal share with his other children, of his real and personal estate. The testator, who survived his daughter, not having performed the covenant by deed or will, this bill was filed by the plaintiff against the executors for a declaration that he was entitled to stand as a creditor against the estate, and for an account. A case having been sent for the opinion of the Court of Common Pleas whether an action was maintainable on the covenant against the executors, and a certificate having been given in the negative,

Wood and *Haig*, for the plaintiff, asked for another case to the Court of Exchequer on the ground that the Court of Common Pleas had not assigned any reasons for their certificate.

The Solicitor-General and *Haldane*, for the executors, contra.

The Vice-Chancellor said, it was the practice of this Court to adopt the certificate of a Court of Law, unless it was satisfied the conclusion was erroneous; and, although the intention of the parties might be defeated by the construction put on the covenant, yet as the daughter had left no issue, the certificate would be confirmed; the mere absence of reasons being *per se* insufficient for directing another case; and as this is a creditor's bill, it must be dismissed with costs.

Nicholls v. Ward.—Feb. 26, 1850.

MASTER EXTRAORDINARY IN CHANCERY.—**AFFIDAVITS.**—**ISLE OF MAN.**—**DEMPSTERS.**

Affidavits sworn before a Master Extraordinary in Chancery, in the Isle of Man, were refused to be received, on the ground that the proper judicial officers to administer oaths were the Dempsters of that island.

AFFIDAVITS were produced in this cause, sworn before a Master Extraordinary in Chancery, in the Isle of Man.

Beakes and *Bagguley*, for the respective parties.

The Vice-Chancellor held that they were inadmissible, as the proper judicial officers in the Isle of Man to administer oaths were the Dempsters.

March 14.—*Lewis v. Marsh*—Account directed by consent of proceeds of collieries.

— 14.—*Hughes v. Powell*—Cur. ad. vult.

— 15.—*Newman v. Hutton*—Bill dismissed with costs.

— 16.—*Hardey v. Dartnell*—Cur. ad. vult.

— 16.—*East and West India Docks and Birmingham Junction Railway Company v. Gattlee*—Injunction restraining defendant from proceeding under 8 Vict. c. 18, for compensation.

— 18.—*Dobson v. Land*—Part heard.

— 13, 16, 19.—*O'Brien v. Lord Kenyon*—Case directed for opinion of Court of Law.

— 19.—*Clay v. Rafford*—Cur. ad. vult.

Queen's Bench.

Regina v. Hardey. Jan. 11, 12, Feb. 26, 1850.

INDICTMENTS FOR CONSPIRACY AND PERJURY.—VERDICT BY CONSENT OF NOT GUILTY.—REFERENCE OF ALL MATTERS IN DIFFERENCE.—ORDER OF NISI PRIUS.

Where upon the trial of two indictments for conspiracy and perjury, a verdict of not guilty was entered by consent for the defendant, and no evidence offered, and a reference directed by order of Nisi Prius to refer all matters in difference to an arbitrator, held, that he had no power to award costs, and that the defendant who revoked his submission to reference before award made, was not liable to an attachment for contempt.

THIS was a rule nisi for an attachment against the defendant, for proceeding in a suit in equity and revoking his submission to arbitration of two indictments for conspiracy and perjury, and all matters in difference, and for the payment of such costs as the Court should think reasonable, or to set aside the verdict of "not guilty," taken by consent on the trial of the indictments, and for writs of *procedendo* to be issued. The two indictments had been removed by *certiorari* from the Central Criminal Court to this Court, and that for perjury was for trial in June, 1848, before Mr. Justice Wightman, at the Middlesex Sittings, when it was arranged that no evidence should be offered, but verdicts of not guilty taken, and all matters in difference should be referred to arbitration, and an order of Nisi Prius accordingly made, which was made a rule of Court. The defendant appeared several times before the arbitrator, but revoked his submission before the award.

Keane showed cause against the rule, which was supported by Sir F. Thesiger, Hurlstone, and Foster.

Cur. ad. vult.

The Court said, that the latter part of the rule as to the payment of costs, could not be sustained, as the award of the arbitrator could not be enforced, if costs were given to the prosecutor under the indictments, there having been verdicts of "not guilty" entered, and as

no evidence was offered, the verdicts could not be disturbed. The reference was either an order of Nisi Prius or under the statute of William 3, and if the former, it could only relate to the costs, as the matters in difference were not the subject of proceedings before the Court, and it did not appear that the requisites of the statute had been complied with to make the reference valid. The rule would therefore be discharged without costs.

Common Pleas.

Maurice v. Marsden. Feb. 12, 1850.

LOCAL TURNPIKE ACT.—TOLLS ON VEHICLES CARRYING PASSENGERS FOR HIRE.—DEMAND AND EVASION OF TOLL.

Under a local Turnpike Act, power was given to exact toll at a gate on vehicles carrying passengers for hire each time they passed through, and on other vehicles only once a day. The defendant carried passengers in an omnibus, as he alleged, for nothing, charging them 6d. for their luggage in a van, and thus evaded the toll: Held, that the plaintiff was entitled to recover for the tolls on the omnibus as carrying passengers for hire.

A RULE nisi had been granted on November 6 last, to set aside the verdict found for the plaintiff in this case and enter it for the defendant, or to reduce the amount thereof from 44l. to 22l. The action was brought to recover certain monies alleged to be due for turnpike tolls from the defendant, who was an innkeeper at Holywell, and ran an omnibus from the railway to his hotel, but in order to avoid paying toll through a gate under the local Turnpike Act, he made no charge for the passengers by the omnibus, but charged 6d. a piece for the luggage carried by a spring cart which followed after and which was only liable to one toll a day, while an omnibus carrying passengers for hire would have to pay each time it passed through. The rule had been refused on the objection of the plaintiff's want of title to be the collector, and also on the ground that the omnibus was exempted as not carrying passengers for hire; but it was granted on the point that the plaintiff should have made a demand of the tolls according to the local act before commencing his action. It appeared that at first, when the collector demanded toll, the driver answered that the passengers were carried for nothing and that the omnibus was therefore not liable, and at length the collector ceased to demand toll, keeping an account of the number of times the defendant's omnibus passed through.

Welsby and Townsend showed cause against the rule, which was supported by Crompton and Wynne Edwards.

The Court said that a sufficient demand had been made, and discharged the rule.

Yates and another, assignees, v. Hoppe. Feb. 13, 1850.

BANKRUPT. — ASSIGNEES. — ACCOMMODATION BILL. — ACTION FOR MONEY HAD AND RECEIVED.

Where a bankrupt gave the defendant a sum of money to meet an accommodation bill, but before it arrived at maturity became bankrupt, his assignees were held not entitled to recover in an action for money had and received.

THIS action was brought, for money had and received, by the assignees of a bankrupt to recover a sum of money which had been placed by the bankrupt in the defendant's hands to meet an accommodation bill at maturity, but previous to which time the bankruptcy took place. The verdict was found for the plaintiffs, but the jury stated that, in their opinion, the payment to the defendant did not take place in contemplation of bankruptcy. A rule nisi to enter the verdict for the defendant was obtained on November 13 last.

The Court said, that as the defendant was the accommodation acceptor only, the action could not be maintained, and made the rule absolute to enter verdict for defendant.

Court of Exchequer.

Parry v. Thomas. Feb. 15, 1850.

ACTION FOR BREAKING AND ENTERING CLOSE.—RIGHT OF COMMON.—GRANT.—PLEA.

The defendant pleaded to an action of trespass for breaking and entering the plaintiff's close and treading down the herbage with cattle, that he was a burgess of H., and that in the reign of Hen. 4, the lord of the manor granted to the corporation of H. by the name of the burgesses of H., common of cattle levant and couchant over the close in question: Held, bad, on the authority of Mellor v. Spateman, 1 Wms. Saund. 338.

A RULE nisi had been obtained for a new trial on the ground of misdirection to enter judgment for the plaintiff *non obstante veredicto*, on the ground that the plea did not sufficiently set out the alleged right or grant of common. The action was in trespass for breaking and entering the plaintiff's close near Holt, in Denbighshire, and treading down the herbage with cattle; to which the defendant pleaded that he was a burgess of Holt, and that the Earl of Arundel, as lord of the manor of Bloomfield, granted, in the reign of Henry the 4th, to the corporation by the name of the burgesses of Holt common of cattle levant and couchant over the close; the plaintiff replied, denying such grant or right alleged by the plea. The grant was proved to have been made, but it being lost, the plaintiff put in a local enclosure act in which the right was called a stinted common; but Maule, J., who presided at the trial, held, that the grant was not of a stinted common, and the defendant obtained a verdict.

Martin, Townsend, and Beavan, showed cause

against the rule, which was supported by *Welsby and Foulkes*, citing *Mellor v. Spateman*, Wms. Saund. 338.

The Court, after taking time to consider, held, that the plea was bad upon the authority of *Mellor v. Spateman*, cited at bar; and that the right of common was not affected by the recital in the local act, and made the rule absolute to enter the verdict for the plaintiff.

Court of Exchequer Chamber.

Regina v. Christopher and others. Feb. 1, 1850.

JERVIS'S ACTS.—INDICTMENT FOR FELONY.—DEPOSITIONS.

The depositions taken before magistrates in felony should only contain such statements as are brought forward against and heard by the prisoners when first deposed to: (per Wilde, L. C. J., Maule, Wightman, and Williams, J. J., Alderson, B., dubitante.)

THIS was a case reserved by the Recorder of Liverpool on the trial of an indictment for felony. It appeared the witnesses were examined in the usual manner in the prisoners' presence before the magistrates, and the minutes of the depositions so taken delivered to an assistant of the clerk to the magistrates to write out, but he put some further questions to the witnesses, the answers to which were added to the depositions. The witnesses then went before the magistrates and were re-sworn, and the depositions, as altered, were read over to the prisoners and signed. At the trial a question was put by the prisoners' counsel to one of the witnesses as to what had been stated to the assistant clerk, but it was, on the objection of the counsel for the prosecution, rejected, on the ground that the answer appeared from the depositions.

Hills against the conviction; *Pagett* in support.

The Court said, that since the passing of the Attorney-General's Acts, (11 & 12 Vict. cc. 42, 43,) it was clear that the prisoners should, the first time it was deposed to, hear all that was to be brought forward against them at the trial. The depositions as added to by the assistant clerk did not therefore exclude parol testimony of what was said before him, and the question rejected ought to have been put. The prisoners would therefore be discharged.

Insolvent Debtors' Court.

(Coram Mr. Commissioner Phillips.)

In re Wells. Feb 7, 1850.

INSOLVENT TRADING UNDER BILL OF SALE.—REMAND.

*Where an insolvent had executed a bill of sale for 480*l.* and continued to carry on business and incurred debts, and had also endeavoured to raise money on a bill, upon his*

¹ Alderson, B., dubitante.

petition for discharge, he was remanded for three months.

Sargood appeared in support of the petition of William Wells, a chemist and druggist in High Street, Camden Town. He was opposed by three creditors in person on the ground that the insolvent had executed a bill of sale for 480*l.*, which, it was alleged, had been advanced to him, and that he had contracted

their debts without reasonable expectation of payment. It appeared that he had endeavoured, but unsuccessfully, to raise money on a bill of exchange for 100*l.*, which he had drawn before going to prison.

The Commissioner held, it was a case for the exercise of the discretionary power in the act, and remanded the prisoner for three months.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see

Jurisdiction of County Courts, p. 87.
Poor Law and Magistrates' Cases, 108.

Courts of Common Law :

Construction of Statutes, 128, 146.
Principles and Jurisdiction, 165.
Appeals from Revising Barristers, p. 189.

Courts of Equity :

Law of Attorneys and Solicitors, p. 229.
Law of Property and Conveyancing, p. 246.
Evidence, p. 289.
Law of Costs, p. 330.
Pleading, p. 371.
Construction of Statutes, 389.]

PRINCIPLES OF EQUITY.

ABSOLUTE INTEREST.

A testator gave the interest of his residuary estate to his mother for life, and afterwards one-half of the interest to his brother and one-half to his sister. Upon the death of the sister, the capital was to go to her children, if any, and if not, to his brother. Upon the death of his brother, the capital was to go to his children. The sister died without children: *Held*, that the children of the brother took no interest in her moiety. *Tatnall v. Tatnall*, 10 Beav. 509.

ALIEN.

Covenant to settle.—*Construction.*—By the settlement made on the marriage of an English lady with a foreigner, her bank annuities were settled in trust for her, her husband, and their children; and her real estates were directed to be sold, and the produce held on similar trusts. And it was agreed between all the parties, and the husband covenanted, that in case any real or personal estate should vest in the wife, or in him in her right, he, as far as he lawfully could, would, either alone or in concurrence with his wife, settle the same upon the trusts, and subject to the powers, &c., therein expressed concerning the bank annuities. Real estates descended on the wife. The husband and some of the children were aliens: *Held*, that the lands descended were bound by the covenant, and that they ought to be sold and the produce invested on

the same trusts as the bank annuities. *Master v. De Croismar*, 11 Beav. 184.

ANNUITY.

1. Notwithstanding the principal question in the suit be the right of the plaintiffs to two annuities, one of which only has been paid, the defendant, on a decree being made for the arrears of the unpaid annuity, cannot set up the Statute of Limitations as limiting the period of the account, if the benefit of the statute be not claimed upon the pleadings. *Rock v. Callen*, 6 Hare, 531.

2. *Executor.*—An executor, in a suit for the arrears of an annuity under a will, disputing the title of the plaintiff to the annuity as a question of law, but admitting assets sufficient to pay general and testamentary expenses and legacies, may be decreed to pay the costs of the suit in addition to the arrears, but is not entitled to a decree for an account of the assets prior to any decree being made for costs. *Rock v. Callen*, 6 Hare, 531.

ASSETS.

Jurisdiction.—The Court has jurisdiction to order the real estates of a deceased debtor to be sold for payment of his debts in a suit for the administration of his estate, though it be instituted, not by a creditor, but by the heir and the next of kin of the deceased. *Price v. Price*, 15 Sim. 484.

ASSIGNMENT.

A Calcutta firm, by a letter dated in January, 1841, directed their London correspondents to hold a sum of money (equal to a lac of rupees, at the current rate of exchange), payable on the 19th November following, out of remittances and consignments on the general account, at the disposal of a creditor of the Calcutta firm at Liverpool. The Calcutta house at the same time acquainted the Liverpool house of the directions which had been given. The London house informed the Liverpool house that they had received and registered the order; and after stating that they were in advance of the Calcutta house, and declining to accept bills for any part of the amount, said, that if remittances should come forward to enable them to meet the wishes of the Calcutta house, they would lose no time in advising the Liverpool

house. The London house, also, in acknowledging to the Calcutta house the receipt of the order, said, that the state of their accounts did not then warrant them in meeting the requisition, but they would meet it if in a position to do so before November. The Calcutta house revoked the order by a letter of January, 1842, received by the London house on the 12th March, 1842.

Held, that the effect of the triple correspondence between the Calcutta house and the London house, the Calcutta house and the Liverpool house, and the London house and the Liverpool house, entitled the Liverpool house, as against the London house, to an account in equity of the balance on 12th March, 1841, on their general account with the Calcutta house, (giving the London house credit, in such account, for all liabilities incurred by them on behalf of the Calcutta house on that day), and of the consignments and remittances of the Calcutta house to the London house in the general account, which came to the hands of the latter between the 12th March, 1841, and the 12th March, 1842.

The London house might have declined the appropriation, and returned the balance of the account to the Calcutta house, but they could not, as against the Calcutta house, have retained any balance due to the Calcutta house, except for the purpose which the latter had directed.

Semble, that the London house was not merely bound to pay to the Liverpool house the amount directed, so far as the balance of account on the 19th November, 1841, enabled them to do so, but was bound to appropriate all the remittances and consignments from the Calcutta house on general account, from the receipt until the revocation of the order, after reimbursing themselves in respect of their advances and liabilities on behalf of the Calcutta house, at the time they received it.

Semble, that the communications between the Calcutta house and the London house, and the Calcutta house and their Liverpool creditor, would not have entitled the latter firm to the account as against the London house, without the communications which took place between the London and the Liverpool firms. *Malcolm v. Scott*, 6 Hare, 570.

BANKRUPTCY.

A joint fiat in bankruptcy was issued against two partners, pending a suit by one of them against the other and a third person who had previously retired from the business, to set aside the partnership agreement on the ground of fraud and misrepresentation on the part of both defendants, and for repayment of the monies which the plaintiff had brought into the concern under that agreement. The assignees obtained leave from the Court of Review to prosecute the suit against the retired partner, and they proceeded by supplemental bill, in which the creditors' assignees were plaintiffs, and the official assignee and the retired partner were defendants: *Held*, that the creditors' as-

signees, who represented not only the original plaintiff on whose behalf relief was sought, but also the bankrupt partner, who was an original defendant against whom relief was sought, could not sustain the suit against the retired partner.

Semble, that, in such a case, the suit might have been prosecuted by assignees appointed to represent the separate estate of the plaintiff in the original suit.

Quære, whether, if it had appeared in evidence in the suit that the defendant, the retired partner, was alone or otherwise answerable for the fund, the Court could, in such a case, have made a conditional decree, imposing terms upon the plaintiff, as representing the bankrupt, who was originally charged as defendant? *Robertson v. Southgate*, 6 Hare, 536.

BEQUEST.

1. *Library*.—A library of books held to pass, upon a general intention that the testator's house should not be disturbed, but kept up for his family. *Ouseley v. Anstruther*, 10 Beav. 462.

2. *Husband, wife, and children*.—*Construction*.—Bequest to Captain A., his wife and children. There were two children: *Held*, that each child took one-third absolutely, and the husband and wife one-third between them. *Gordon v. Whieldon*, 11 Beav. 170.

Cases cited: *Anon.*, Skinner, 182; 4 Vin. Abr. 154, pl. 10; *Brinkes v. Whaley*, 1 Vern. 233; *Back v. Andrew*, 2 Vern. 120.

CHARITY.

1. *Devise*.—A testator devised property, then in lease at a rent of 26*l.*, to the principal of Brazenose College, the bailiff of Birmingham, and the mayor of Haverfordwest for the time being, to hold to them and their successors for ever; the said yearly rent to be paid in manner following: the sum of 8*l.* 13*s.* 4*d.* as an additional maintenance to the school at Birmingham, to be paid to the schoolmaster by the direction of the bailiff and his brethren, 8*l.* 13*s.* 4*d.* to Brazenose College for a scholar, and 8*l.* 13*s.* 4*d.* to the schoolmaster of Haverfordwest. And he directed, that at the expiration of the lease, the land should be "sett forth and improved by the said principal, bailiff, and mayor for the time being, or their successors, either by fine or otherwise, so that the said rent of 26*l.* be for ever reserved and paid as before expressed, and the fine, if so sett, should be equally divided between the said schools and college." *Held*, that this was a devise to the three persons as joint tenants in fee, and descended to the heir of the last survivor; and 2ndly, that the college took no beneficial interest in the increased rents or fines afterwards reserved. *Attorney-General v. Gilbert*, 10 Beav. 517.

2. *Fitness of trustees*.—*Reference to the Master*.—The Court does not act on its own knowledge of the fitness of parties named in a petition seeking the appointment of new trustees in the room of deceased trustees of charities,

but makes the usual reference to the Master. *In re Shrewsbury Municipal Charities; In re Shrewsbury Free Grammar School*, 1 H. & T. 204.

CLUB.

Suing on behalf, &c.—A club, composed of numerous members, was dissolved. Two of the managing committees possessed themselves of the assets, and applied them in winding up the affairs: *Held*, that they might be sued by one member "on behalf," &c., for an account of the monies received and its application, and to bring back the balance, if any, without making the other members parties, and without seeking a general winding up of the concern. *Richardson v. Hastings*, 11 Beav. 17.

CONDITION.

Breach of trust.—The plaintiff deliberately and with full notice, accepted the benefits under his mother's will, which "prohibited" him from setting up any claim on account of any "error, irregularity, or impropriety" in the execution of the trusts of his father's will: *Held*, that he could not maintain a suit against the executor of the father's will, to make him accountable for the profits made by the employment of part of the trust funds in his business. *Egg v. Devey*, 10 Beav. 444.

Case cited in the judgment: *Tattersall v. Howell*, 2 Mer. 26.

COVENANT.

See *Allen*.

DEBTOR AND CREDITOR.

Release.—Merely voluntary declarations indicating the intention of a creditor to forgive or release a debt, if they are not evidence of a release at law, do not constitute a release in equity.

Unless there be a consideration, or some other equitable ground of distinction, equity in such a case follows the law. *Cross v. Sgrigg*, 6 Hare, 552.

Cases cited in the judgment: *Wekett v. Raby*, 2 Bro. P. C. 386; *Padmore v. Gunning*, 7 Sim. 644; *Richards v. Syme*, 2 Eq. Ca. Abr. 617; *Aston v. Pye*, 5 Ves. 350, n.; *Bym v. Godfrey*, 4 Ves. 6; *Eden v. Smyth*, 5 Ves. 341; *Reeves v. Brymer*, 6 Ves. 516; *Gilbert v. Wetherell*, 2 S. & S. 254.

DEVISE.

1. A testator, after devising a freehold to two and their heirs, and a leasehold to two others and the survivor, her heirs, executors, administrators, and assigns for ever, proceeded:—"And I give all the rest of my household furniture, books, linen, and china, except as hereinafter mentioned, goods, chattels, estate, and effects, of what nature or kind soever, and wheresoever the same may be, at the time of my decease, unto B. and S., their executors, administrators, and assigns, in trust." He afterwards, specifically, bequeathed his ready money and various chattels: *Held*, by the Court of Exchequer, that the word "estate," thus circumstanced, did not pass real estate;

but this Court not being satisfied, directed a case to the Common Pleas. *Sanderson v. Dobson*, 10 Beav. 478.

2. A testator devised an estate to "Elizabeth Abbott, (a natural daughter of Elizabeth Abbott of G., single woman, and who formerly lived in his service,)" for life, with remainder to her children. At the date of the will, there was no person answering this description; for though Elizabeth Abbott, who had formerly lived in service, had a natural child, yet it was a son and not a daughter, and was named John and not Elizabeth; besides this, Elizabeth herself was not then a single woman, but had married one Caddy, and had a legitimate daughter, Margaret. John Abbott being dead, the property was claimed, first, by the plaintiff, on the ground that the gift was void for uncertainty; 2ndly, by the children of John Abbott; and 3rdly, by Margaret; but the Court held, under the circumstances, that the children of John Abbott were entitled. *Ryall v. Hannam*, 10 Beav. 536.

See *Charity*.

EXECUTOR.

1. *Nest of his.*—*Residue undisposed of.*—A testator bequeathed all his property to A. upon certain trusts, (but which were not co-extensive with his interest in the property,) and by a clause at the end of the will, appointed A. executor of it.

Held, that A. was not a trustee of the interest undisposed of for the testator's next of kin; but was entitled to it beneficially. *Mapp v. Elocak*, 15 Sim. 568.

Cases cited in the judgment: *Dawson v. Clark*, 15 Ves. 409; *Southouse v. Bate*, 2 Ves. & B. 396.

2. An executor having assets of his testator, either in money or goods, before any bill had been filed for the administration of the estate, applied to a creditor of the testator for a loan of a sum of money, equal in amount to the debt; and the creditor accepted the personal security of the executor for the amount, and released his debt against the estate: *Held*, that the executor having, by such substitution of his own security for that of the estate, discharged the debt, as against the estate, should not be treated as a mere purchaser of the debt of the creditor, and, as such, entitled only to stand in the place of the creditor; but that the executor was entitled to be allowed, in his own discharge, the amount of the debt as a debt of the testator preferred and paid. *Hepworth v. Heslop*, 6 Hare, 561.

3. On a question in the administration of assets, whether a bond given by the testator to his son for alleged arrears of salary was voluntary or for valuable consideration, the Court, not relying on the admission of the testator, or the examination of the son and executor, in a case where the estate was insolvent, directed an issue on the question, whether the testator, at the time of executing the bond, was indebted to the obligee to the amount thereby secured: *Hepworth v. Heslop*, 6 Hare, 56.

EXONERATION OF PERSONAL ESTATE.

A testator devised all his real property to trustees, upon trust, in the first place, subject to the payment of his funeral expenses, of any debts, and of the annuities, and the ordinary legacies thereafter bequeathed, for his son for life, &c., &c. And, after giving certain annuities and legacies, and after giving his furniture, wines, and stores to his wife for life, and an annuity of 440*l.* out of his real and personal estate, he bequeathed to his son "all his personal property, after his mother's decease, except" some plate: *Held*, that the personal estate was not exonerated from the payment of the debts, &c. *Ouseley v. Austruther*, 10 Beav. 453.

FELLOWSHIP.

1. An assignment of the emoluments of a fellow of a college in the university is valid in equity, and effect will be given to a security thereon, out of the dividends apportioned to such fellow, from time to time, in respect to his fellowship. *Feistel v. King's College, Cambridge*, 10 Beav. 491.

2. *Receiver*.—Motion by an incumbrancer on a fellowship for a receiver and injunction refused, with costs, by Vice-Chancellor of England. *Boskeley v. King's College, Cambridge*, 10 Beav. 602.

FEME COVERT.

Gift to a lady for life, and, after her death, amongst all her children "which should be living at her death," and if but one, to such only child, such shares to become vested interests at 21. The lady being 63, and desirous of giving up her life interest, she and her children, all of whom had attained 21, presented a petition for payment to the children. One of the children was a *feme covert*. The Court declined making the order. *Brandon v. Woodthorpe*, 10 Beav. 463.

INFANT.

1. The Court cannot (independent of the statute 11 G. 4, and 1 W. 4, c. 65, s. 17,) authorize trustees for infants to grant a mining lease, although the legal estate is vested in such trustees, and such leases would be beneficial to the infants. *Wood v. Patteson*, 10 Beav. 541.

2. A party entering upon and taking the rents and profits of an infant's estate, may be sued at law as a trespasser, or in equity as the bailiff, guardian, and trustee of the infant, at the election of the plaintiff. *Wyllie v. Ellice*, 6 Hare, 505.

Cases cited in the judgment: *Newburgh v. Bickerstaffe*, 1 Vern. 295; *Doe v. Keen*, 7 T. R. 886, 390; 2 Fowl. Eq. 235.

3. Where it appears that several persons entered on and held the estate of an infant, one of such persons cannot be sued by the infant in equity as his bailiff, guardian, or trustee, for an account of the rents and profits of the estate, without making parties to the suit the others of such persons. *Wyllie v. Ellice*, 6 Hare, 505.

INSOLVENT DEBTOR.

1. A. filed a petition in the Insolvent

Debtors' Court, with a view to obtaining the benefit of the act. Shortly afterwards an order was made, in a suit, for payment of a sum of money to her out of Court. After the Insolvent Court had made an order vesting all her property in the provisional assignee, but before it had made any adjudication respecting her she died. After her death a creditors' assignee was appointed.

Held, that notwithstanding there had been no adjudication, the assignee, and not the administrator of A., was entitled to the sum in Court. *Bruce v. Charlton*, 15 Sim. 562.

2. An appointment of a person claiming to be a creditor of an insolvent debtor, assignee of his estate and effects in the place of a deceased assignee, on condition that the person so appointed shall pay his debt by affidavit on taking out his appointment, such debt having been afterwards proved accordingly, is a valid appointment, entitling the party so appointed to sustain a suit for the purpose of recovering property claimed as part of the estate of the insolvent. *Cole v. Coles*, 6 Hare, 517.

3. The omission of the assignees of an insolvent debtor to sell or take possession of the copyhold estate of the insolvent, or to cause an entry of the assignment or copy of the appointment of the assignee to be made on the Court rolls, or to possess themselves of the copies of Court roll for a period of 19 years after the insolvency, whereby the insolvent is enabled to retain the property and hold himself out as the owner, and mortgage it for value to a person who had no actual knowledge of the insolvency, does not constitute an equitable ground for giving such mortgagee a charge in priority to the title of the assignees. *Cole v. Coles*, 6 Hare, 517.

4. The clauses of the statute for the Relief of Insolvent Debtors, which provide, that in case the insolvent shall be entitled to any copyhold or customary estate, the assignment to or certified copy of the appointment of the assignee shall be entered on the Court rolls of the manor, and that the assignee shall, with all convenient speed, make sale of all the estate and effects of the insolvent, are not mandatory, but directory only. *Cole v. Coles*, 6 Hare, 517.

ISSUE.

Action at law.—Distinction between directing an issue and giving liberty to bring an action at law to try a legal right. In the former case, application for a new trial must be made in this Court, when all the proceedings at law will be examined; but in the latter, application for a new trial must be made to the Court of law, and this Court will look merely to the result of the action. In the latter case also, if there has been a miscarriage at law, relief, if any, cannot be obtained, upon the case coming on upon equity reserved, without a petition. *Hope v. Hope*, 10 Beav. 581.

Cases cited in the judgment: *Stevens v. Præd*, 3 Ves. J. 522; *Holworthy v. Mordlock*, 1 Cox, 143.

[To be concluded in our next Number.].

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SATURDAY, MARCH 30, 1856.  
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SUMMARY OF THE LAW BILLS NOW BEFORE PARLIAMENT.

It will be useful, in the pause of proceedings in parliament during the Easter Recess, to give a glance at the present state of the Bills relating to the Law. In former Sessions a large part of this class of bills was brought in after Easter, and often towards the close of the Session. We are glad to observe in the present year that most, if not all, of the measures for altering the law have already been introduced, and many of them have made considerable progress,—so that the survey of the state of law reform and the probable result of the Session may be estimated with tolerable accuracy.

HOUSE OF LORDS.

The most important bills affecting the interests of the suitors and practitioners are as follow:—

1. The *Jurisdiction of the Masters in Chancery without Bill or Petition* in suits for the administration of assets and trusts, and for the appointment of guardians and allowance of maintenance to infants; and giving effect to the decisions of the Masters without confirmation by the Court, except in cases of appeal. Lord Brougham introduced this bill. The 6th May has been appointed to proceed in Committee.

2. The amendment of Sir Edward Sugden's *Trustee Acts*, enabling the Court to transfer trust property, whether lands, stocks, or choses in action, *by an order of Court instead of a deed*, from trustees who are lunatics, infants, out of the jurisdiction, or who refuse or neglect to act. This Bill, also brought in by Lord Brougham, has been read a second time, and is committed for the 6th May. The prints of the bill were only delivered a very few days before the second reading.

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3. The *Railway Audit Bill*, which provides that the bills of costs payable by railway companies must be taxed, including, evidently, not merely the solicitors of the companies, but all solicitors who on behalf of their clients have any claim for costs on the sale of property or on account of any other transactions with such companies. This measure, introduced by Lord Granville, has been referred to a select committee, appointed to meet on the 18th April.

4. Lord Brougham's Consolidation and Amendment of the *Bankrupt Laws*, the bill for which is appointed to be read a second time on the 19th April, but which has not yet excited the attention of the City Committee, or any other of the parties who were so active on this subject in the last Session.

5. There is also a Bill for the Appointment of Umpires, brought in by Lord Portman, and waiting for second reading.

6, 7. In the department of *Criminal Law*, there is Lord Brougham's Bill for its Consolidation, and the Government Bill as to Convict Prisons.

8, 9. In regard to the *Church*, there are the Ecclesiastical Commission Amendment Bill, brought in by the Lord President, and the Proceedings against Clergy Amendment Bill, by the Bishop of London.

10, 11. There are also two Bills relating to the Law of *Prelates*—the one concerning the *Transfer of Land*, the other the Administration of Justice: by transferring the business of the *Equity Exchequer* to the Court of Chancery.

12. We conclude with the Acts of Parliament Abridgment Bill, which waits for second reading, on the introduction of Lord Brougham.

HOUSE OF COMMONS.

1. The Repeal of the *Certificate Duty* of Attorneys and Solicitors—the adjourned de-

base on which stands appointed for the 2nd May.

2. The Vestry Clerks' Bill, enabling unqualified persons to practise before the Petty Sessions, is to be read a second time on the 24th April.

The Administration of Justice.

3. The County Courts' Extension Bill stands appointed for second reading on the 10th April.

4. The Charitable Trusts Bill is for second reading on the 8th April.

5. The Pleading and Practice Bill in the Superior Courts will soon be introduced by the Attorney-General.

6. The Registrar in Bankruptcy Bill is in committee.

7. The Bill for allowing Affirmations in lieu of Oaths is in committee for the 24th April. This bill is proposed by Mr. Wood.

8. The Common Pleas Fees Bill will be in committee on the 12th April. It is proposed by Mr. Bouverie.

The Law of Property.

9. The Real Property Transfer Bill, proposed by Mr. Drummond, including a General Register of Deeds, is appointed for second reading on the 8th May.

10. The Real Property Conveyances Bill, proposed by Mr. Headlam and Mr. Wood, under which the Taxing Master is to consider, not the length of deeds, but only the skill, labour, and responsibility, will be in committee on the 10th April.

11. The Copyhold Emancipation Bill of Mr. Aglionby stands for second reading on the 17th April.

12. The second reading of the Landlord and Tenant Bill is fixed for the 1st May.

13. The Assignment of Life Policies Bill, proposed by Mr. Fagan, will be in committee on 17th April.

14. The Benefices in Pluralities Bill is appointed to be considered in committee. It is proposed by Mr. Frewen.

In the Criminal Law.

15. Sir J. Pakington's Jurisdiction in Lunacy Bill will be in committee on the 18th April.

16. The Bill of Mr. Milnes for the Punishment of Juvenile Offenders is fixed for second reading on the 24th April.

17. Mr. Ewart intends again to propose, on 29th April, the total Abolition of the Punishment of Death.

The Miscellaneous Bills are as follow:—

The County Rates Bill, appointed

for second reading on 10th April, proposed by Mr. Milner Gibson.

19. The Rating of Small Tenements Bill, proposed by Mr. Halsey, will be in committee 24th April.

20. Mr. C. Lewis's Bill for the Management of Highways stands for second reading on April 11.

21. The second reading of the Surveyors of Highways Bill is fixed for 24th April, proposed by Mr. Frewen.

22. Mr. Wortley's Prohibited Marriages Bill remains in committee.

The Bills relating to the Law in Ireland, proposed by the Solicitor-General are:—

23. The Improvement of Proceedings in Chancery: amendments to be considered in committee on the 11th April.

24. Common Law Process and Practice: amendments to be considered on 12th April.

25. Registration of Deeds: In committee.

26. Judgments. Amendments to be considered 8th April.

POWER OF COMMITTAL UNDER
THE COUNTY COURTS' ACT.

EFFECT OF
BANKRUPTCY OR INSOLVENCY.

THE power of committal for forty days, vested in the judges of the County Courts under the 99th section of the act 9 & 10 Vict. c. 95, is in many respects peculiar and anomalous. The power of imprisonment may be exercised under this provision in seven different cases:—first, where the debtor, when summoned, does not attend; secondly, if he refuses to disclose his property or transactions; thirdly, if his answers are unsatisfactory; fourthly, if he has contracted the debt fraudulently; fifthly, if he has contracted the debt without reasonable prospect of being able to pay; sixthly, if he has concealed or made away with his property; and lastly, if having the means of payment by instalments or otherwise he has been ordered to pay and has not paid. To give the Court jurisdiction to commit, however, in any of these cases, there must be a judgment of some Court constituted or destroyed by the act, and such judgment must be unsatisfied at the time the order of committal is made. Although the debt has been incurred under the most fraudulent circumstances, and the debtor has misconducted himself in the manner described in all the seven instances contemplated by the act as justifying a committal, if the

debtor, when judgment is pronounced against him, is able and willing, to discharge the debt and costs, he escapes punishment for his offence be it of a simple or a compound character. Nay more, if the debtor has been adjudged guilty of fraud or any other of the offences enumerated, and an order actually made for his imprisonment, by the 110th section of the County Courts' Act, he is entitled to be discharged from custody upon payment of the debt and costs. The order of imprisonment, therefore, is partly of a civil and partly of a criminal nature. The power of commitment is only to be exercised in cases of fraud or delinquency—or where a party has omitted to do something he is morally bound to do and is able to do. The party subjected to imprisonment must therefore be considered as an offender, and yet he is protected from punishment if he can pay the debt in respect of which the offence has been committed. It fact, this law has no terrors for rich knaves. Its severity is considerably reserved for dishonest poverty.

The operation of this singular enactment is still more remarkable, when viewed in connection with the Law of Bankruptcy or Insolvency. The 9 & 10 Vict. c. 95, s. 102, provides, "that no protection, order, or certificate, granted by any Court of Bankruptcy, or for the relief of Insolvent Debtors, shall be available to discharge any defendant from any commitment" under this act. It is quite clear, therefore, that although a Court of Bankruptcy may grant its certificate, discharging a bankrupt from all his debts, and the Insolvent Court may order the discharge of an insolvent in respect of all the debts specified in his schedule; neither the certificate of the one Court nor the order of the other relieves a debtor already imprisoned under an order of a judge of the County Court. But it sometimes happens, that a debtor sued in the County Court and not yet committed by that Court becomes bankrupt or insolvent; and the question arises, whether his certificate in bankruptcy, or his discharge by the Insolvent Court, protects the debtor from commitment under the County Courts Act? According to a late case¹ a commitment by the judge of a County Court, in respect of a debt, from the payment of which the debtor is discharged by bankruptcy or insolvency, is not necessarily illegal. In the case referred to, it appeared, that a creditor named Cubitt, recovered judgment in the Bloomsbury

County Court, against Joseph Stephen Purday, on the 11th January, 1849, and on the 18th of that month, the judge made an order for his commitment, on the ground that he had obtained credit, from Cubitt, under false pretences, and made a gift, delivery, or transfer, of his property in order to defraud his creditors. On the 15th May, 1849, Purday filed a petition in the Insolvent Court inserting the debt due to Cubitt in his schedule, and on the 22nd April, 1849, the Insolvent Court made an order, discharging him from custody and declaring him entitled to the benefit of the act as to all debts entered in his schedule. The warrant under which Purday was committed upon the order of the County Court, was dated the 11th Jan., 1849, and upon a motion for a habeas corpus, with a view to his discharge, Mr. Justice Erie held, that the warrant of commitment was valid, and therefore refused the application. A similar application was afterwards made to the Court of Common Pleas, and that Court granted a rule nisi, but after argument discharged the rule, being clearly of opinion that the commitment was not objectionable. It will be observed that in *Purday's case* the order of commitment was antecedent to the order of the Insolvent Court discharging the debtor, although the warrant of commitment was long subsequent to the adjudication entitling the debtor to the benefit of the Insolvent Act. The Courts of Law were not called upon, therefore, to decide, whether if the order for commitment was after the defendant's discharge under the Insolvent Act, a commitment upon it would have been legal; and we believe the point has not yet been determined. If a County Court judge is not bound to give effect to a previous certificate in bankruptcy, or discharge in insolvency barring the creditor from the ordinary legal remedies for recovering the debt in respect of which the County Court judge is called upon to commit, it follows that the debtor may be punished twice for the same offence. For example, Purday may have been opposed by the creditor Cubitt when he came before the Insolvent Court and remanded to prison for any period not exceeding three years, under the 1 & 2 Vict. c. 110, s. 77, for making away with property to defraud creditors, and again committed by the County Courts' judge for a period not exceeding forty days. Even where there has been no punishment inflicted by the Bankrupt or Insolvent Court, a debtor who has recently passed through the one ordeal or the other, if

committed by a County Court judge, is in a worse position than a person who has not obtained a certificate or discharge under the Insolvent Act. In either case, the law has diverted the bankrupt or insolvent of all his property, and he is therefore unable to obtain that relief from imprisonment which, as we have seen, under the County Courts' Act, can never be denied to any debtor, however fraudulent or dishonest, who has retained the command of sufficient means to satisfy a judgment of 20*l.* and costs. The harshness and injustice that would result from the opposite construction leads us to hope that whenever the question is fairly brought before the Superior Courts, it will be found that a certificate in bankruptcy, or a discharge by the Insolvent Debtors' Court, frees a debtor not only from all liability to pay debts previously incurred, but also protects him from being punished by imprisonment upon the order of a judge of the County Court in respect of such debts. To say that the commitment by a County Court judge is not for the non-payment of a debt savours rather of a refinement, when we find that the payment of the debt prevents or puts an end to the imprisonment. If any doubt exists upon the matter, it would be convenient, whenever the County Courts' Act is amended, that the doubt should be set at rest, and also that the power of commitment should be limited, so that there should not be repeated commitments for the same delinquency.

NOTICES OF NEW BOOKS.

An Essay on the Principles of Circumstantial Evidence, illustrated by numerous Cases. By WILLIAM WILLS, Esq. Third Edition. London: Henry Butterworth, 1850. Pp. 256.

We have long intended to notice this book, and now avail ourselves of the opportunity of a third edition to call the attention of our readers to its merits. The rules and principles of the law of evidence form not only the most interesting, but the most important, part of a lawyer's study. In this department of jurisprudence he has to deal not merely with the dry and abstract rules of law, either general or particular, but facts and circumstances are brought under his review often of the most singular and extraordinary character, involving considerations of the mental and moral constitution of human beings of the deepest interest and the greatest difficulty.

Mr. Wills pays due respect to the great merits of Beatham and Starkie, but has adopted a different course from those eminent writers in the treatment of his subject, and especially in illustrating it by reference to many of the most remarkable of our criminal trials. The author has arranged the materials of his volume in the following order:—

1. Of evidence in general, including its nature and various kinds, and the assurance produced by different kinds of evidence.

2. Of circumstantial evidence, comprising presumptions, the relative value of direct and circumstantial evidence, and the sources and classification of evidentiary facts.

3. Inculpatory moral indications, comprehending—motives; declarations of intention; preparations for the commission of crime; recent possession of the fruits of crime; unexplained appearances of suspicion; and attempts to account for them by false representations; indirect confessional evidence; the suppression, destruction, fabrication and simulation of evidence; and presumptions under penal statutes.

4. Extrinsic and mechanical, inculpatory indications, namely,—identification of person and of articles of property; hand-writing; and verification of time.

5. Exculpatory presumptions and circumstantial evidence.

6. Rules of induction applicable to circumstantial evidence.

7. Proof of the *corpus delicti*, comprising the general doctrine as to the proof of the *corpus delicti*; and proof by circumstantial evidence; application of the doctrine to cases of homicide; and of the general principle in cases of poisoning; and of infanticide.

8. The force and effect of circumstantial evidence, including general grounds of the force of such evidence; considerations which augment the force of circumstantial evidence in particular cases.

It will be seen from this summary that there can be no work, connected with legal study and practice, more interesting to the lawyer or the philosophic reader than this treatise of Mr. Wills; and we are glad to bear testimony to the learning and ability with which all parts of the subject have been discussed. On the relative value of direct and indirect evidence, Mr. Wills cites the opinions of Paley and Burke on the superiority of circumstantial over positive evidence, adding that of Mr. Justice Buller, who observed, "that a presumption which necessarily arises from circumstances is very often more convincing and more satisfactory than any other kind of evidence." The author observes that—

"It is obvious that the doctrine laid down in these several passages is propounded in

language which not only does not accurately state the question, but implies a fallacy; and that extreme case—the strongest ones of circumstantial, and the weakest of positive evidence—have been selected for the illustration and support of a general position. ‘A presumption which necessarily arises from circumstances’ cannot admit of dispute, and requires no corroboration; but then it cannot in fairness be contrasted with and opposed to positive testimony, unless of a nature equally cogent and infallible. If evidence be so strong as necessarily to produce certainty and conviction, it matters not by what kind of evidence the effect is produced; and the intensity of the proof must be precisely the same, whether the evidence be direct or circumstantial. It is not intended to deny that circumstantial evidence affords a safe and satisfactory ground of assurance and belief; nor that in many individual instances it may be superior in proving power to other individual cases of proof by direct evidence. But a judgment based upon circumstantial evidence cannot, in any case, be more satisfactory than when the same result is produced by direct evidence, free from suspicion of bias or mistake.

‘Perhaps no single circumstance has been so often considered as certain and unequivocal in its effect, as the same dominion water-mark usually contained in the fabric of writing-paper; and in many instances it has led to the exposure of fraud in the propounding of forged or genuine instruments. But it is beyond any doubt (and several instances of the kind have recently occurred) that issues of paper have taken place bearing the water-mark of the year succeeding that of its distribution,—a striking exemplification of the fallacy of some of the arguments which have been remarked upon. How often has it been iterated in such cases, that circumstances are inflexible facts, and that facts cannot lie!’

The proper effect of circumstantial, as compared with direct evidence, is well described by Lord Chief Baron Macdonald:—

‘When circumstances connect themselves closely with each other, when they form a large and a strong body, so as to carry conviction to the minds of a jury, it may be proof of a more satisfactory sort than that which is direct. In some lamentable instances it has been known that a short story has been got by heart, by two or three witnesses; they have been consistent with themselves, they have been consistent with each other, swearing positively to a fact, which fact has turned out afterwards not to be true. It is almost impossible for a variety of witnesses, speaking to a variety of circumstances, so to concert a story, as to impose upon a jury by a fabrication of that sort, so that where it is cogent, strong, and powerful, where the witnesses do not contradict each other, or do not contradict themselves, it may be evidence more satisfactory than even direct evidence; and there are more instances than one where this has been the case.’ In another

case the same learned judge said, ‘where the proof arises from a number of circumstances, which we cannot conceive to be fraudulently brought together to bear upon one point, that is less fallible than under some circumstances direct evidence may be.’

We had intended to extract one or two of the most extraordinary cases of circumstantial evidence contained in the 8th chapter of the work, but our limits prevent us from adding more than the summary with which the author concludes his labours. He remarks that—

‘The rules of evidence are the practical maxims of legal and philosophic sagacity and experience, matured and methodised by a succession of wise men, as the best means of discriminating truth from error, and of contracting as far as possible the dangerous power of judicial discretion. They have their origin in man’s nature, as an intellectual and moral being; and are founded (to use the language of one of the most eloquent of advocates) ‘in the charities of religion, in the philosophy of nature, in the truths of history, and in the experience of common life.’ Such rules must of necessity be substantially the same, in all cases and in every civilized country; and the inviolable observance of them is indispensable to social security and happiness. To disregard them, under whatever circumstances or pretext, is to subject to the sport of chance those fundamental rights which it is the object of social institutions to secure.

‘The design of this Essay has been to investigate the foundations of our faith in circumstantial evidence, to ascertain its limits and its just moral effect, and to illustrate and confirm the reasonableness of the practical rules which have been established in order to prevent the unauthorized assumption of facts, and to secure to relevant facts their proper weight. It has been maintained that circumstantial evidence is inherently of a different and inferior nature from direct and positive testimony; but that nevertheless such evidence, although not invariably so, is most frequently superior in proving power to the average strength of direct evidence; and that, under the safeguards and qualifications which have been stated, it affords a secure ground for the most important judgments in cases where direct evidence is not to be obtained.

‘It must however be conceded, that ‘with the wisest laws, and with the most perfect administration of them, the innocent may sometimes be doomed to suffer the fate of the guilty; for it were vain to hope that from any human institution all error can be excluded.’ But certainly has not always been attained even in those sciences which admit of demonstration; still less can unfailing assurance be invariably expected in investigations of moral and contingent truth. Nor can any argument against the validity and sufficiency of circumstantial evidence as a means of arriving at moral cer-

taimly be derived from the consideration that it is equally applicable to circumstantial evidence, which does not equally apply as an objection against the validity and efficiency of moral evidence of every kind; and it is believed that a far greater number of mistaken sentences have taken place in consequence of false and mistaken direct and positive testimony, than from erroneous inferences drawn from circumstantial evidence.

These considerations ought not therefore to produce an unreasonable and indiscriminate scepticism; the legitimate consequence of such reflections should be to inspire a salutary caution in the reception and estimate of circumstantial evidence, and to render the legislator especially wary how he authorises, and the magistrate how he inflicts, punishment of a nature which admits neither of reversal nor mitigation. Would that the total abolition of such punishment were compatible with the paramount claims of social security! It is indispensable however, under every system, to the very existence of society, that the tribunals should act upon circumstantial evidence. Infallibility belongs not to man; and even his strongest degree of moral assurance must be accompanied by the possible decree of mistake; but, after just effect has been given to sound practical rules of evidence, there will remain no other source of uncertainty or fallacy, than the general liability to error, which is necessarily incidental to all investigations founded upon moral evidence, and from which no conclusion of the human judgment in relation to questions of contingent truth, whether based upon direct or circumstantial evidence, can be absolutely and entirely exempt."

EQUAL AUDIENCE

OF

BARRISTERS AND ATTORNEYS IN THE COUNTY COURTS.

Our readers are aware that the rule established by Mr. Serjeant Dowling in the important Circuit of Yorkshire,—giving equal audiences to barristers and attorneys in insolvency cases, as well as plaints before the County Court,—received the sanction of the Attorney and Solicitor-General, and we expected that it would have been followed in the few Courts which had not previously established the same practice. Mr. *Harden*, however, the judge of the County Court at *Chester*, has ruled otherwise; and it appears from the report in the *Chester Courier* of the 24th March, that this decision is grounded on the former practice of the Insolvent Commissioners of the London Court when they went the Circuit, and Mr. *Harden* conceives himself justified in continuing the practice.

The learned judge, however, overlooks

the important fact, that the transaction by act of parliament of insolvency cases in the County Courts, rendered it necessary that such cases should be conducted according to the rules of the new Court, where attorneys have a right to be heard equally with barristers. Such was the case on writ of trial from the Superior Courts to the Sheriff; and so it continues in matters referred by the Court of Chancery to the Master, and even before the Judges themselves when sitting in Chambers.

Mr. Serjeant Dowling, after fully and clearly discussing the provisions of the 9 & 10 Vict. c. 95, and the 10 & 11 Vict. c. 102, and the objects and principle of these statutes, so far as they applied to the question before him, well observed, that "on principle, as well as authority, every Court must be guided by its own rules in disposing of the business before it, whether that business has been initiated in that Court, or delegated or removed to it."

The intention of the legislature, which must be best known to the Attorney and Solicitor-General, who conducted the bill through parliament, will be frustrated if the decision of Mr. Serjeant Dowling be not upheld; and we cannot doubt that the new rules which are in preparation will set the question at rest in all the Courts.

ABSENCE OF COUNSEL

BEFORE THE

VICE-CHANCELLOR OF ENGLAND.

The profession in general will feel gratified to the Vice-Chancellor of England for strictly carrying out his resolution to abolish the practice of adjourning his Court on account of the absence of leading counsel. In a published letter to the Vice-Chancellor, Mr. Purton Cooper, Q. C., has called attention to this important subject, and set forth many striking instances of the mischief arising from the abolished practice. It is worthy of remark, that, many years ago, the Law Society endeavoured to correct this crying abuse, and the Vice-Chancellor of England, then within the Bar, and a very few others, agreed to cease their practice to the Court, but the example was not followed by the Bar generally. Mr. Cooper has rendered good service to the suitors of the Court in taking the pains to collect and state the evils which arose from the former practice. Mr. *Macleay*, as one of the seniors of the Inner Bar, however,

—*See page 220, note.*

ably, pointed out the prejudice occasioned to the junior Bar by the postponements which took place when the leader in the ranks was engaged in another Court. We doubt not that many of the juniors will prove themselves fully competent to supply the place of those favourite leaders into whose hands it is the fashion to crowd briefs which might well be confided to the juniors who have toiled through all the stages of the case. We hope the solicitors will aid the Vice-Chancellor in his just determination to remove these impediments in the administration of justice.

The following are the principal topics of Mr. Cooper's pamphlet; with several interesting extracts from evidence and correspondence bearing on the question:

That one-third of Trinity Term, 1847, was entirely lost, and that subsequently the waste of time exceeded that proportion.

That one consequence of the practice just abrogated was a rapid diminution of the most important business of the Vice-Chancellor of England's Court.

That in November and December last only two cases in his Honour's General Paper were heard.

Four instances are stated of the loss and mischief consequent upon the Vice-Chancellor of England rising merely because leading counsel were engaged in another Court.

The pamphlet also contains, "An Extract from the Evidence of James Wigram, Esq., one of her Majesty's counsel [now Sir James Wigram], taken 22nd June, 1840, before the Select Committee of the House of Lords appointed to consider of the bill intitled 'An Act for facilitating the Administration of Justice,' and to report thereon to the House; Lord Chancellor Cottenham in the chair.

"An Extract of Letter from the late Joseph Kaye, Esq., Solicitor to the Bank of England, to the late John Ponblanque, Esq., one of his Majesty's counsel, dated 20th April, 1822; and

"Extract of Letter from the late Joseph Kaye and Germain Lavie, Esqs., to William Horne, Esq., one of his Majesty's counsel [now Sir William Horne], dated 23rd May, 1827, written agreeably to his request, laying before him the substance of the conversation which they had had that morning with Lord Chancellor Eldon respecting recent communications between the Law Society and the King's counsel practising in the Court of Chancery, with regard to their electing to attend either the Court of the Lord Chancellor, or that of the Vice-Chancellor."

We will next submit a note from Mr. Cooper on the subjects to which we allude.

"Mr. Cooper presents his compliments to the Editor of the *Legal Observer*, and will be

much obliged by being permitted to state in his able periodical, with reference to a passage which has recently appeared in a law publication, that the Vice-Chancellor of England, with whom Mr. C. is and has always been upon the most friendly terms, perused the letter on the abolition of the practice of adjourning the Court by reason of the absence of leading counsel as soon as it was in type, and that it was only after his honour's full and unhesitating approbation of the circulation of it that it was worked off and published.

"There were reasons for that step which cannot be put into print.

"12, New Square, March 26, 1850."

THE NEW STAMP LAW.

MORTGAGE TRANSFERS, &c.

THE opportunity afforded by the introduction of the new Bill for altering the Stamp Laws will, of course, not be lost by the profession, in setting at rest the doubts respecting the proper interpretation of the existing Stamp Acts, particularly in regard to transfers of mortgages. If a transfer of a mortgage contains a fresh covenant for payment of the money, or any additional security be given, a deed stamp of 35s., as well as the transfer stamp of 35s., is necessary. So where a further sum is advanced and additional security is given for the original sum, there must be a deed stamp as well as the *ad valorem* stamp for the further sum.

An opinion also prevails that a transfer of mortgage containing a new proviso should be stamped as an original mortgage. If such be the law, there are numerous deeds which are not properly stamped, for it has been a common practice to insert a fresh covenant or new proviso on the transfer of a mortgage; and to stamp the deed merely as a transfer.

We expect that the bill will be printed in a few days, and shall call the attention of our readers, from time to time, to all the points which affect them or their clients.

The resolutions, on which the bill will be founded, appear to impose an *ad valorem* duty on every kind of equitable mortgage. This may be beneficial to the practitioner in compelling a regular mortgage to be executed, where the loan may be even for a very short time; but it will be hard on the client, and probably injurious to credit. We believe many millions are lent by bankers on a deposit of deeds.

And by another provision, where the security is subsequently stamped, so as to take effect from the date of the stamp.

The reduction of the rate of duty, according to the amount of the consideration is just and politic, but it does not appear clearly whether the 10s. stamp on memorials for the registry of deeds is to be retained or not. On property of small value, the stamp is very oppressive.

UNPOPULARITY OF LAWYERS.

To the Editor of the Legal Observer.

SIR,—As there appears to be some anxiety existing to know the cause of the unpopularity of lawyers, I think I can help to solve the question by the mere description of the treatment received from one of that learned body.

An action was brought in November last against a builder, to recover the amount of his acceptance, 31l. 4s. 6d., and the defendant having been unfortunate in business, a little time was required, and our client, the defendant, called upon the plaintiff's attorney, and asked who the plaintiff was and where he lived; (as being indorsee he was not known to the defendant), in order that he might see him and obtain time for payment. This information was refused, and the action was proceeded with as fast as possible, and when, in order to save an execution, (it being impossible for the defendant to raise the money, until an arrangement for sale of a house should be completed,) it became our duty to take out a summons for time to plead, which I did, and I need not inform your readers that it is the invariable practice in all respectable offices, to give a few days by consent as a matter of course, but not so, it appears, with the attorney in question, for down came his clerk to the Judge's chambers to oppose a minute's time being given, but to the honour of Mr. Justice Talfourd's generous feelings, our poor client did obtain a week by his order. The defendant not wishing to incur further costs, we were directed to wait upon the plaintiff's attorney and propose a consent to a judgment as early as the plaintiff's attorney could obtain one by a trial; but the attorney declared, that if the defendant wanted time he should pay dearly for it. We were ultimately obliged to plead to the action on the 1st January, which had the effect of our being served with the issue, notice of trial, notice to inspect and admit, &c., *the very next day!* To prevent the trial, an order to stay the proceedings was obtained, and as by trying the cause judgment could have been obtained by the 20th instant, and the defendant wanted until the 22nd, this favour was granted upon his consenting to pay costs as between attorney and client, (which included alleged attendances on the plaintiff whenever the defendant proposed terms, &c.); and to wind up, we were obliged to pay 31l. 9s. 6d. debt and nothing, &c., and 21l. 10s. 9d. costs!

A MANAGING CLERK.

UNPUBLISHED LETTER OF ALEXANDER POPE.

ADDRESSED TO MR. BARON FORTESCUE.

An autograph Letter of Alexander Pope to Mr. Baron Fortescue, has been presented to the Incorporated Law Society by one of its members, who observes in a note, by which it was accompanied, that the autograph unites Law and Poetry—an appropriate affinity—for the creative invention which called into existence John Doe and Richard Roe—those grim and portentous personages—rivaling at least, if not surpassing, the embodiment of the dark Gnomes that figure in the Raps of the Poet; and further—to pass by the shadowy form of the “*Cassid Ejectus*,” looming in grand indistinctness in the arcana of the Common Law—surely the sportive fancy which, in the department of Conveyancing, evolved the wonderful fiction of a lease for a year—ah! that the reforming spoilers should have blotted out one of the pets of our legal infancy and innocence—this sportive fancy has equalled or surpassed the creations of Pope or any other poet under the sun. So that, upon the whole, this memento may be appropriately conserved by a legal body.

The donation was the more acceptable on account of the letter being addressed to the learned Baron at his residence “in Bell Yard, by Lincoln's Inn, London,” evidently on, or very near, the site of the building of the Society. The document is as follows:—

“To the Hon. Mr. Baron Fortescue,

“in Bell Yard, by

“Lincoln's Inn, London.

“D^r Sir,

“I am gone, before this can reach you, to Southampton, where my stay will be a fortnight. I was sorry to have no opportunity of passing a Day with you and yours, but I propose it often after my return. In y^e mean time the purpose of this Letter is to desire you and Them to make what use you will of my House and Gardens, w^{ch} are large enough to lodge you all, and to try if they can bear a country life, any where but in Devonshire.

“D^r Sir, believe me ever, sincerely,

“Y^r most affectionate faithful

“Friend and Servant,

Sunday.

“A. Pope.”

The date of the Letter appears to be ascertained by the following indorsement upon it, probably in the hand-writing of the learned Baron:—

“Mr. Pope, May, 1736.”

It will be recollected that Pope died about eight years afterwards, namely, on the 20th May, 1744, then in the 56th year of his age.

MOOT POINTS.

POWER OF APPOINTMENT OF NEW TRUSTEES.

In a marriage settlement is contained a power "that if the said J. S. and R. H., or either of them, or any future trustee or trustees to be appointed, as hereinafter is mentioned, shall happen to die or be desirous of being discharged of and from, or refuse or decline to act in the trusts hereby in them respectively reposed, before the said trusts shall be fully discharged, then, and as often as the same shall happen, it shall be lawful for the trustees or trustee, so desisting to act, or the executors or administrators of such of them so dying, by any writing or writings under his or their hand and seal or hands and seals, (with the consent of husband and wife, or the survivor as therein set forth,) from time to time to nominate, substitute, or appoint any other person or persons, to be a trustee or trustees in the stead or place of the trustee or trustees so dying or desiring to be discharged, or refusing, or declining to act as aforesaid."

R. H. has been dead many years, leaving J. S. surviving. Said J. S. died in 1820, and in January, 1821, the sole executor of J. S. (who declined to act,) appointed by dead J. S. to be a trustee in the place of J. S. deceased.

S. J. died about 15 years ago, leaving a will and appointing his son sole executor, who has acted ever since in the execution of the trusts of the settlement. The trusts are not yet discharged.

Can the son of executor J. S. now relinquish the trust, and is he the person to appoint another in his place? A SUBSCRIBER.

LEGAL MISCELLANEA

ADMINISTRATION OF JUSTICE IN SPAIN.

It is a remarkable fact that while George the Third, at the commencement of his reign, constituted his Judges for life, Isabella of Spain, in the 15th century, whose character may be placed in juxtaposition with our Elizabeth, pursued a diametrically opposite course. By one of her statutes, the commission of the judges, which before extended for life, was abridged to one year. This new order was made at the repeated and earnest remonstrance of Cortes, who traced the remissness and corruption too frequent of late in the Court to the circumstance that its decisions were not liable to be reviewed during life. Few will doubt, at any rate, that the remedies proposed must be fraught with far greater evil.

The judges were to ascertain every week, either by personal inspection or report, the condition of the prisons, the names of the prisoners, and their offences. They were required to bring them to a speedy trial, and afford every facility for their defence. An attorney was provided at the public expense, under the title of "Advocate for the Poor," whose duty it was to defend suits of such as were unable to maintain them at their own cost. Severe penalties

were enacted against the venality of judges, as well as against such counsel as took exorbitant fees, or even maintained actions that were manifestly unjust.—*Preseott's Ferdinand and Isabella*, vol. i. 258.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From Feb. 19th. to March 22nd, 1850, both inclusive, with dates when gazetted.

Fox, William, John Joseph Mundell, John Iltid Nicholl, and William Fox, jun., 16, Great Knight Rider Street, Doctors Commons, Practisers, so far as regards the said John Joseph Mundell. March 1.

Husband, James, and James Wyatt, 4, Verulam Buildings, Gray's Inn, Attorneys and Solicitors. March 22.

Lloyd, Walter, and William Jones, Carmarthen, Attorneys, Solicitors, and Conveyancers. March 12.

Snowden, Thomas Hoges Grove, and Lodowick Anderson Pollock, Ramsgate, Attorneys, Solicitors, and Conveyancers. Feb. 26.

Weymouth, John Francis, and Frederick Green, Angel Court, City, Solicitors. March 22.

MASTERS EXTRAORDINARY IN CHANCERY.

From Feb. 19th. to March 22nd, 1850, both inclusive, with dates when gazetted.

Anglim, Robert, Eimerick, for Ireland. Feb. 22.

Baxter, Stafford Squire, Attlestone. March 22.

Bone, Robert William, Devonport. March 1.

Burton, John Francis, Lincoln. March 1.

Chateaux, Richard Samuel, Seelhall. March 12.

Copper, John, Manchester. March 1.

Davies, Charles, jun., Southampton. Feb. 22.

Dixon, Charles, Brecon. Feb. 19.

Hewitt, Benjamin Bradley, Bishop's Waltham. March 15.

Reeves, Archibald, Taunton. March 15.

Rodway, Rowland, Trowbridge. March 15.

Rogers, Henry, Melton. March 12.

Snape, Thomas, Warwick. March 12.

White, George, Epsom. March 19.

PERPETUAL COMMISSIONERS.

Appointed under the *Fines and Recoveries Act*

Francis, John Dunkin, Chesham, in and for the Counties of Buckingham, Hartford, and Bedford.

Stoscombe, William, Reading, in and for the County of Berks, also in and for the Counties of Bucks, Hants, Oxford, Surrey, and Wilts.

ATTORNEYS TO BE ADMITTED.

Easter Term, 1880.

[Concluded from page 363, ante.]

Queen's Bench.

Clerks' Names and Residences.

To whom Articled, Assigned, &c.

Harcourt, Charles, 13, Hornsey-rose, Hornsey-road	John Gregson, Bedford-row
Haviland, Edgar, 78, George-street, Easton-square	Edward Elkins, Newman-street, Oxford-street
Harwood, Joseph, 37, Percy-street, Tottenham-court-road	Daniel Davies, Warwick-street, Regent-street
Hardwick, Thomas Bell, Bridgnorth	Richard O. Beckhouse, Bridgnorth
Hawke, Henry, Sheffield	Wm. B. Fernell, Sheffield
Joyce, George Prince, 115, Stamford-street, Blackfriars Road; and Manchester	James Young, Farnival-street; T. Peacock, Bartholomew-close
Jackson, Edward Hugh, 23, Mornington-crescent; and Walsoken	Edward Jackson, Wisbeach; Charles F. Skirrow, Bedford-row
Jelliberto, Edward John Brown, 4, Mortimer-st., Cavendish-square; Manchester; and Neashley	Ellis Cunliffe, Manchester
Jennings, Thomas Smith, 26, Tonbridge-place, New-road; and 64, Judd-street	Edward Jennings, Chancery-lane
Jennings, James Milnes, 11, East-street, Lamb's Conduit-street; and Great Driffield	Edmund Dade Conyers, Great Driffield
Joel, Joseph George, 14, Soley-terrace; Newcastle-upon-Tyne; and Bishopwearmouth	J. T. Hoyle, Newcastle-upon-Tyne; J. M. Cooper, Bishopwearmouth
Keith, Frederic Thomas, 3, Old Bond-street; Norwich; and Guildford-street	Thomas Moore Keith, Norwich
Kimberley, James William, Birmingham	Alexander Harrison, Birmingham
Levy, David Lawrence, 17, Norfolk-street, Strand	Edward Lewis, Adam-street, Adelphi
Labrow, Valentine Hicks, 3, Wilmington-square	George Faulkner, Bedford-row
Lightoller, Charles William, 49, Liverpool-street, King's-cross; Chorley; and Wigan	Edward Woodcock, Wigan
Lukin, John Thomas Best, 31, East-street, Queen's-square; and Frome	Alfred Whitaker, Frome
Lee, James Frankham, Clapham-rose	George M. Frankham, Moorgate-street
Lewis, William, 101, Newgate-st.; and Crickhowell	Arthur R. Gabell, Crickhowell
Lewis, Leopold David, 23, Finsbury-place North	George Blaxland, Crosby-square
Lloyd, Oliver Wimburn, 18, Norfolk-street, Park-lane	William John Whyte, Russell-square
Lamb, George Warren, 14, Manchester-street	Messrs. Lamb and Nettlehip, Kettering
Mackay, George Mackenzie, Callipers, near Rickmansworth	Edward Thomas Whitaker, Lincoln's-inn-fields
Miller, John, Eastfield, Gloucester	George Frederick Peters, Bristol; Henry Abbot, Bristol
Mew, James Alfred, 1 Alfred-place, Tottenham-court-road; and Newport, Isle of Wight	Joseph Parker, Loughborough; John Henry Hearn, Newport
McMillin, James, jun., 3, Half-moon-crescent, Islington; and Yardley-street	A. Read, Werthing; J. Pater, Symond's-inn; J. Gilham, Bartlett's-buildings
Mitobinson, Frederic Henry, 31, Compton-terrace; Islington	Henry Shephard Law, 23, Bush-lane
Morland, Robert Wood, 5, Wernow-road, St. John's-wood; and Bolton-le-Moors	Thomas P. Bunting, Manchester; G. Marsland, Bolton-le-Moors
Mercroft, William Frederick, Higher Bobington	Thomas Mercroft, Liverpool
Merriman, Thomas Hardwick, Kensington-square	E. J. Jennings, Mitre-court-buildings, Temple
Meredith, Charles, Newport, Salop	Robert Fisher, sen., Newport
Nowell, Joseph, 4, Strahan-place, Islington, and Barton-upon-Humber	Robert Brown, Barton-upon-Humber
Nunn, Sturley, jun., Ixworth; Pakenham-street; and Ely-place	S. Nunn, sen., Ixworth
Oliver, William Henry, 36, Guildford-street, Russell-square; and 37, Amwell-street	William Kewell, 2, Angel-court, Throgmorton-st.
Onions, John Henry, 4, Arthur-street, Gray's-inn-road; and Stonbridge	Henry Corser, Stonbridge; Edward A. Chaplin, Gray's-inn-square
Palmer, Thomas William, 26, Tonbridge-place, New-road	Edward Jennings, Chancery-lane
Parker, Charles R. Frederick, Greenwich	C. R. Parker, Greenwich; R. Q. Parker, Greenwich
Plummer, Edward, 9, Gull-street, Strand; and Canterbury	Stephen Plummer, Canterbury
Park, James, 5, Lloyd-street, Lloyd-square, Castle-street; and Ulverston	William Robinson, Lancaster; William Dunn, Lancaster
Parry, Cain, Mold	John Chambers, Mold

- Pinniger, Broome, 30, New Ormond-street, Temple-chambers; Henry Pickett, ditto
- Phillips, Charles Thomas, 46, Hunter-street, Brunswick-square
- Preston, Richard Montague, 5, Church-passage, Guildhall
- Purcell, Thomas, 12, Wells-street, Gray's-inn-road
- Pace, Edward Henry, Pershore
- Parson, Joseph William, Balham-hill
- Royle, Samuel, Ruislip, near Manchester
- Rolt, Frederick, 40, London-street, Finsbury-square; and Meriton
- Rhodes, Frederick Jackson, Market-Rasen
- Robinson, George, 10, Porchester-place, Edgeware-road; Lancaster; Burton-street; and Warwick-place
- Rogers, Henry, 26, Charter-house-sq.; and Helston
- Robinson, Charles Thomas, Calthorpe-street, and Southey
- Ritson, Joseph Johnstone, Cockermouth
- Rawlins, William, jun., Winchester; and Bloomsbury-square
- Robins, Greenway, 11, Lyndhurst-sq., Peckham
- Rayner, Joseph, 15, Lower Calthorpe-street, Gray's-inn-road; Clifton; Brompton-square
- Rickards, Walter, 7, Highbury-crescent
- Read, David, 64, Bedford-place, Kensington
- Rennolls, William, 48, Richmond-road, Islington
- Reid, James, 16, Park-road, Holloway
- Richardson, Joseph, 3, Percy-circus, Pentonville; and Liverpool
- Rannacles, Anthony, 55, Great-Percy-street, Clerkenwell; Great Ormond-street; Brunswick-pl.
- Rackham, Matthew Robert, Little Guildford-street, Russell-square; Norwich; and Heigham
- Singleton, John, 34, Great James-st., Bedford-row
- Simpson, Thomas Fox, 6, Argyle-street; and Walsham-le-Willows
- Shuttleworth, Thomas, 10, Lower Calthorpe-street, Gray's-inn-road; and Barnfield
- Simon, Robert, Oswestry
- Stratford, Robert Cooper, Cheltenham
- Samners, John Burgess, Gloucester Buildings, Old Kent-road; Pembroke; and Bedford-row
- Sharp, Ernest, 9, Mark-lane
- Simpson, Thomas, Leeds
- Sharpley, Frederick, 16, Herbert-street, Hoxton; and Loath
- Sills, William, 24, Mornington-crescent
- Selby, John, 10, George-street, Euston-square
- Taylor, William Muehall, 8, Everholt-street, near Mornington-crescent; and Wytherford
- Timbrell, Thomas, Cheddle
- Towne, John Edward, 2, Harcourt-buildings, Temple; Wrexham; and Lower Calthorpe-street
- Thomas Cadogan Morgan, Brunswick-st., Southwark; and North
- Tyler, Henry William, Mousmouth; and Everett-street
- Ververs, Alban Alfred, Great George-st., Euston-sq.; Lincoln's-inn-fields; Featherstone-buildings; and Grenville-street
- Waldron, Clement, 37, Wakefield-street, Regent-square; Wivelscombe; and Sidney-place
- Waghorn, Charles James, 2, Ladbroke-road, Notting-hill
- Wilkinson, Charles, 5, Church-row, Newington-butts; and Grange-Sandside
- Whalley, Thomas, 1, Buxley-place, Greenwich; and Lewisham
- Whately, George Hamilton, 36, Brynmor-square; and Lincoln's-inn-fields
- Walker, Joseph Bland, Wakefield
- Broome, Pinniger, jun., Newbury; C. Parsons, Temple-chambers; Henry Pickett, ditto
- John Taylor, Gray's-inn
- Timothy Tyrrell, Guildhall-yard
- John Hammond, West Burton
- Thomas Woodward, Pershore
- Alfred Thomas Isaac Baker, 4, Pancras-lane
- Wm. Joynton, Manchester; Richard Gibson, Manchester
- James Robertson, Southampton-buildings; James Pearson, Furnival's-inn
- Thomas Rhodes, Market-Rasen
- Thomas G. Dodson, Lancaster; William Robinson, Lancaster
- Thomas Rogers, Helston
- O. R. Wilkinson, St. Neot's; William M. Bennett, Raymond Buildings
- Robert Benson, Cockermouth
- James Hodgson, Lincoln's-inn-fields; William Rawlins, Winchester
- F. J. Riddale, Gray's-inn
- George Higham, Brighthelm
- John Coles Symes, Fenchurch-street
- William Dyke Whitmarsh, jun., New Sarum
- James Pooley, Lincoln's-inn-fields
- Hubert Martineau, Raymond's-buildings
- James A. Watson, Liverpool
- Edward Henry Rickards, Lincoln's-inn-fields
- Robert Wortley, Tombland
- Cuthbert Singleton, Great James's-street
- Samuel Golding, Walsham-le-Willows
- William Sale, Manchester
- Richard J. Croxon, Oswestry
- Josh. C. Straford, Cheltenham
- Robert Lanning, Pembroke
- Edward J. Murray, Whitehall-place
- William Middleton, Leeds
- Field, F. Geo., Loath
- John Arnold, jun., Birmingham
- Thomas Selby, West Malling
- H. Turner, Wolverhampton, and Brewood; J. N. Mourriyan, Verulam-buildings
- Frederick Dowding, Bath; Thomas Crabbe, Cheddle
- John Beanton, Wrexham; Evan Morris, Harcourt-buildings
- A. Catherson, Neath; J. H. Rowland, Thosend-needle-street
- Charles Tyler, Mousmouth
- John Hallard, Worcester
- James Waldron, Wivelscombe
- Robert Robson Sadler, Golden-square
- Robert Moser, Kendal
- William S. Masterman, Wine-office-court, Fleet-st.
- George Cooper, Lincoln's-inn-fields
- Twistleton Haxby, Wakefield; John Scholey, Wakefield

Wiles, Harold, 46, Great Dover-rd.; and St. Ives
 Woof, Richard, 10, Gray's-inn-pl.; and Worcester
 White, William Edward, 106, Great Russell-st.,
 Bedford-square; South Crescent, Guildford
 street; Bloomsbury-street; Fairfield, Lough-
 borough; and New Radford
 Walford, Thomas Sturge, Fulham
 Williams, Charles Henry, Cheltenham; Bedford-
 place; and Guildford-street
 Wells, William, 18, Upper Phillimore-place, Ken-
 sington
 White, Charles, 33, West-square, Lambeth
 Wade, Charles Martin, 52, Cambridge-st., Hyde-
 park
 Wood, William, Chorlton-upon-Medlock

Messrs. Allpress and Lawrence, St. Ives
 Edmund Thomas, Worcester

William Enfield, Nottingham
 Thomas Walford, 27, Bolton-street, Piccadilly

James Boodle, Cheltenham

Robert B. Upton, Austin Friars
 William Mark Fladgate, Claven-street, Strand
 George Sperling and George William Harris, Hal-
 stead
 Charles Wood, Manchester

Added to the List pursuant to Judge's Orders.

Badnall, Wm. Beaumont, Leek; Argyle-st., St.
 Pancras; Albert-terrace, Notting-hill

Baker, Louis Innes, 52, Devonshire-street,
 Queen's-square; and Great Ormond-street
 Beloe, Edward Milligen, 17, Holford-square;
 King's Lynn; Fenchurch-buildings; Mil-
 man-street; Soley-terrace

Bartrum, Joseph Kilvert, 2, Stammore-street, Is-
 lington; and Castle-street

Coleman, William Rose, Gosport

Gough, Kedgwin Hoskins, 8, Farnival's-inn

Sprott, James, Staple-inn, Holborn

Sutton, Benjamin Heley, 22, Southampton-street,
 Bloomsbury-square; and Holloway Head,
 near Birmingham

Beetholme, George Law, 152, High Holborn

John Cruso, Leek; Frances Cruso, Leek
 Philip Johnson, Lincoln's-inn-fields; Herman
 Lang, 5, Serjeant's-inn, Fleet-street

John James Coulton, King's Lynn

Thomas Staunton, Bath; John Fox, Old Broad-st.
 R. Cruickshank, Gosport

J. E. Gough, Hereford; James Robinson, Queen-
 street-place

Richard Raven, 2, King's-bench-walk

William Docker, Birmingham

J. L. Beetholme, 7, Castle-street, Oxford-street

NOTES OF THE WEEK.

ADJOURNMENT OF PARLIAMENT.

THE House of Lords has adjourned till Thursday, the 11th April, and the House of Commons till Monday, the 8th. We refer to the First Article, page 413, *ante*, for a statement of the several Bills before each House relating to the Law, the stages at which they have arrived, and the days appointed for their next consideration.

THE NEW STAMP DUTIES' BILL.

Since the notice of this important measure at page 419, *ante*, we have seen a print of the bill. It follows the resolutions which were published with the votes of the House, comprising in one schedule the repealed duties, and in the other the substituted duties. There are several parts of the bill which will require the careful attention of conveyancers and solicitors.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Sanderson v. Cockermouth and Workington Railway Company. Feb. 5, 6, 12, 1850.

RAILWAY COMPANY.—SPECIFIC PERFORMANCE OF CONTRACT.—EXTENT OF EASEMENTS.—REFERENCE.

Upon appeal from, and affirming, the decision of the Master of the Rolls, a reference was directed to inquire the extent of easements to which the plaintiff was entitled under the contract entered into with the defendants on the commencement of their railway, to provide equal accommodation for transit from one part of the plaintiff's property with the portion covered by the railway, as existed previously.

THIS was an appeal from the Master of the

Rolls, directing a reference to the Master to inquire what easement the plaintiff was entitled to under a contract entered into by the defendants, on its being determined to carry their line through the plaintiff's property. It was arranged by the agreement that the defendants should provide accommodation for the plaintiff passing from one part to the other of his property, for carts or cattle by bridges or otherwise, equal to what had previously existed.

Maites and Borton, for the appellants, contended that the company were only bound, under the 8 Vict. c. 18, to provide a communication on the level of the railway and creeps for cattle, and could not be compelled to construct a bridge.

Roupell and Renshaw, for the respondent, were not called on.

The Lord Chancellor said, the plaintiff was

entitled to a specific performance of his contract, into which the company had elected to enter instead of acting on the provisions of the 8 Vict. c. 19, and the only question to be determined was as to the extent of the easements, and dismissed the appeal.

Waring v. Manchester, Sheffield, and Lincolnshire Railway Company. Feb. 13, 1850.

CONTRACT.—DEMURRER FOR WANT OF EQUITY.—APPEAL.—COSTS.

Held, affirming with costs the decision of the Vice-Chancellor Wigram, 38 L. O. 208, that where the allegations in a bill, seeking an injunction to restrain the defendants from entering the plaintiffs' works and completing the contract at their expense, and for other relief, would, if proved, establish fraud on the part of the defendants' officer preventing the fulfilment of the contract; a demurrer for want of equity was overruled.

THIS was an appeal on behalf of the above railway company from the decision of the Vice-Chancellor Wigram, (reported *ante*, vol. 38, p. 208).

The Solicitor-General and Osborne for the appellants; Wood and Erskine, for the respondents, were not called on.

The Lord Chancellor held, that the bill disclosed sufficient equity to authorize the issue of an injunction, and dismissed the appeal with costs.

March 14.—*Weaver v. Grant*—Appeal from Vice-Chancellor Knight Bruce dismissed with costs.

— 14. — *Tomlinson v. Troughton* — Part heard.

Master of the Rolls.

Dawson v. Birkenhead, Lancashire, and Cheshire Junction Railway Company. March 2, 1850.

RAILWAY COMPANY.—BILL TO RESTRAIN APPLICATION OF FUNDS TO PORTION OF RAILWAY.—DEMURRER FOR WANT OF EQUITY.—COSTS.

The directors of a railway company are not authorised to abandon the construction of a part of a railway, which their act empowered them to make; and a demurrer for want of equity to a bill filed by a shareholder, suing on behalf, &c., for an injunction restraining the application of the funds to the construction of such portions only, was overruled with costs.

THIS was a demurrer for want of equity, to a bill filed by the plaintiff, a shareholder in the above railway company, on behalf of himself and all the other shareholders thereof, except the defendants, for a declaration, that the defendants were not empowered to apply the funds of the company in making the proposed

railway from Chester to Lower Walton only, they being authorised by their bill to construct a railway from Wootton to Helsley and from Lower Walton to Heaton Norris.

Roupell and Glasse in support of the demurrer; *Turner and Cble*, contra.

The Master of the Rolls overruled the demurrer, with costs. The defendants were clearly not entitled to apply the funds of a railway company subscribed for the construction of an entire railway to make only a portion.¹

March 20, 21.—*Attorney-General v. Dalton and others*—*Cur. ad. vult.*

— 22.—*Rooth v. Tomlinson and others* — Part heard.

— 23.—*Carlisle v. South-Eastern Railway Company* — Injunction to restrain defendants paying dividends on shares until railway authorized to be made was opened for traffic, with leave to move.

— 26.—*Chambers v. Howell*—*Cur. ad. vult.*

— 28.—*Hume v. Gilchrist*—Order by consent for defendant residing in South Australia to be allowed to appear on exceptions taken on undertaking to put in formal answer.

— 26.—*Ord v. Parkyn*—Injunction continued.

Vice-Chancellor of England.

Forster v. Greaves. Feb. 14, 1850.

TRUSTEE.—DISCLAIMER.—DECREE FOR ACCOUNT.

Where a party who was heir-at-law, devisee, and executor of a testator, having disclaimed the trusteeship, acted as agent for the trustees, and passed his accounts as such, a bill charged fraud in not selling, &c., against the trustees, was dismissed, except as to the usual administration decree.

THOMAS FORSTER, by his will, dated in 1832, gave certain estates to Thomas N. Forster, Erasmus R. Forster, H. Compton, and J. A. Stokes, upon trust to sell the same and pay the proceeds to his wife for life, and directed, after payment of certain legacies, the surplus to be divided among his children. The trustees were also appointed executors, but E. R. Forster and H. Compton alone proved the will. This bill was filed by one of the residuary legatees against the four trustees for an account and for inquiries as to losses occasioned by the estates not being sold, and that they might be declared liable for such losses. The bill alleged that T. N. Forster, who was the heir-at-law, had acted in the trusts of the will, and that no disclaimer had been executed by the other trustees. By their answers, the trustees denied the allegations of the bill, and stated that no sale had taken place in consequence of the depreciation of the property, and T. N. Forster further alleged that he had dis-

¹ See also *Cohen v. Wilkinson*, 38 L. O. 166; *ante*, p. 66; *Baynham v. Eastern Union Railway Company*, *ante*, p. 384; *Hodgson v. Earl Powis and others*, *ante*, p. 385.

children and had never acted as trustees, but merely acted as agent for the trustees, and had passed his accounts up to the filing of the bill in 1847, as such. No replication was filed to the answers.

Bethell and Hardy for the plaintiff; *Stuart and Nicholls* for T. N. Forster; *J. Parker and Lloyd* for the other trustees.

The Vice-Chancellor said, it was competent for the defendant, T. N. Forster, to enter into the management of the property as agent for the trustees only—he being heir-at-law, devisee, and executor—without incurring the liability of a trustee. And the bill, except as to the prayer for the usual administration accounts, was dismissed with costs.

In re East Anglian Railway Acts, ex parte Corporation of Godmanchester. March 15, 1850.

RAILWAY.—PAYMENT OUT OF COURT OF PURCHASE-MONEY FOR CORPORATION LANDS.—BOROUGH OFFICERS.

An order was made for the payment out of Court of the purchase-moneys of corporation lands, to the petitioners, the corporation, without the borough officers being made parties.

This was a petition for payment out of Court of the purchase-moneys of certain corporation lands, to the corporation of Godmanchester. It appeared the borough officers were not made parties.

Shaper, in support, referred to the 5 & 6 W. 4, c. 76, ss. 7, 15, and 8 Vict. c. 18, s. 69.

The Vice-Chancellor made the order notwithstanding the borough officers did not appear.

In re Leeds and Thirsk Railway Company, ex parte Rector of Kirkby Overblow. March 15, 1850.

RAILWAY.—PURCHASE-MONEYS OF GLEBE LANDS.—INVESTMENT WITHOUT SERVICE OF PETITION ON COMPANY.

The purchase-moneys of glebe lands were, upon the petition of the rector, directed to be invested in lands, notwithstanding the railway company had not been served with the petition, but merely with notice of motion.

This petition was presented by the rector of Kirkby Overblow, for the investment of the money paid by the Leeds and Thirsk Railway Company for certain glebe lands. The petition was not served on the company, but they had notice of motion.

The Vice-Chancellor made the order as prayed.

March 20.—*Fairburn v. Pearson*—Injunction restraining defendant from collecting partnership debts or signing bills in joint names, and for receiver.

21.—*Tolson v. Heald and another*—Injunction granted, ex parte, to restrain defendant's selling fraudulent imitations of plaintiff's registered design on caskets.

March 19.—*Beale v. Symonds*—Judgment on construction of will.

21.—*Corporation of Liverpool v. Clippens*—Injunction to stay proceedings in action.

22.—*Dyne v. Costabalis*—Cur. ad. vult.

22.—*In re Harrison's Trust*—Order for payment out of Court of money paid in under Trustees' Relief Act, without service of petition, notice of application having been duly served.

23.—*Shrewsbury and Birmingham Railway Company v. London and North Western and Shropshire Union Railway and Canal Companies*—Injunction granted.

23.—*Cox and others v. Crawford*—Injunction dissolved to restrain action at law.

25.—*Ex parte Stanhope, in re Marylebone Joint-Stock Banking Company*—Master's decision inserting name of petitioner on list of contributories without qualification affirmed, but without costs.

26.—*In re Boston, Newark, and Sheffield Railway Company, ex parte Williams*—Order to inquire as to expediency of dissolution and winding up, or winding up under the 11 & 12 Vict. c. 45, with leave to apply, and costs reserved.

26.—*Fletcher v. Moore*—Stand over.

Vice-Chancellor Knight Bruce.

James v. Talbot. Feb. 14, 1850.

WILL.—CONSTRUCTION.—NEPHEW.

*A testator, by his will, gave 100*l.* to "Thomas Soper Talbot," and certain articles to "his nephew Thomas Talbot," and then bequeathed the residue to his "three nephews; the said Thomas Talbot," &c. The nephew's name was Thomas Soper Talbot, but he had a son named Thomas Talbot. Held, that the testator's great nephew took nothing.*

This was an exception to the Master's report as to the parties intended by the testator to take certain property under his will. It appeared that the testator, Jesse Talbot, by his will, dated September, 1842, gave 100*l.* to his nephew, Thomas Soper Talbot, and a time-piece and half his wearing apparel to his nephew Thomas Talbot, and then directed the residue of his estate and effects to be equally divided "between his three nephews, the said Thomas Talbot, Jesse Talbot, and James Talbot. Upon the reference to the Master at the hearing, he reported that the testator meant the sons of his brother James Talbot, viz. Thomas Soper Talbot, Jesse Talbot, and James Talbot, and that he meant Thomas Soper Talbot by the name "Thomas Talbot." The latter had a son named Thomas Talbot, on whose behalf this exception was taken on the ground that the testator meant two persons by the different descriptions.

A. J. Lewis in support; *Robert Soper Talbot, Hare, F. T. White, Hingston, and W. Beal*, contra.

The Vice-Chancellor said, that as Thomas Soper Talbot was specifically named, the

Impounded by the testator, he was entitled to settle, though the testator probably meant the grand nephew. In regard to the residuary bequest, the present amount by the testator's nephew, Thomas Talbot, must be taken to be Thomas Soper Talbot, and the exception would therefore be overruled.

Dixey v. Henderson. Feb. 9, 1850.

INCOME TAX ACT.—DEDUCTION OF INCOME TAX FROM INTEREST ON BILL OF EXCHANGE.

Held, that income tax was properly deducted from the amount payable on account of interest upon a bill of exchange.

THIS was an appeal from the decision of Sir George Rose, deducting a sum of 9l. 4s. 1d. for income tax from the interest claimed on a bill of exchange payable to the Royal Bank of Scotland and accepted by Mr. Taylor, the testator in the cause. A decree had been made for the administration of the estate.

Lewis, in support, referred to the 5 & 6 Vict. c. 35, ss. 100, 107; *Holroyd v. Wyatt*, 1 De G. & S. 125; *Dawson v. Dawson*, 11 Jur. 984.

Toller, for the executors, contra.

The Vice-Chancellor, after consulting Masters Dowdeswell and Farrer, declined to disturb the course of practice which had been pursued in the Masters' offices, and directed the costs of the executors and other parties who had appeared to be costs in the cause, but refused the petitioners their costs.

March 21.—North Staffordshire Railway Company v. London and North-Western Railway Company.—Stand over.

—21, 22.—*Lord Rasmere v. Mowatt*—Bill dismissed with costs.

—22.—*In re St. George's Steam Packet Company, ex parte Hennessy's Executors*—Cur. ad. vult.

—23.—*Chambers v. White*—Order on Great Northern Railway Company to pay purchase money into Court.

—25.—*Haynes v. Barton*—Judgment as to costs.

—26.—*Ex parte Latta, in re Royal Bank of Australia*—Order for dissolution and winding up.

—26.—*In re Direct Exeter, Plymouth, and Devonport Railway Company, ex parte Roberts*—Order for review of Master's decision inserting name on list of contributories of a party who had consented to be a provisional committee-man, upon a stipulation of being held free from all liabilities.

WILL—CHANCELLOR ELLIOT.

Widdell v. Ward. March 7, 1850.

FORECLOSURE SUIT.—HUSBAND AND WIFE.

SEPARATE ANSWER.—DEFAULT OF WIFE.—PRACTICE.

Directions on behalf of the defendant, that his wife should be sequestrated for 19 years.

might be ordered to put in a separate answer, and that he might be declared not answerable for her default, was refused as to the former partly, but granted as to the latter.

Stable; the motion to put in a separate answer can only be made by the plaintiff, and not by a co-defendant.

THIS was a motion that the defendant's wife, Frances Ward, who was resident in the Isle of Man, and had lived apart from her husband for 19 years, might be ordered to put in a separate answer, and for a declaration that the defendant was not answerable for her default in not appearing or answering in this suit, which was for foreclosure.

Beales, in support, said notice of the motion had been served upon the wife.

Baggallay, for the plaintiff, did not oppose.

The Vice-Chancellor said, the application to order the wife to put in a separate answer could not be made by a co-defendant, but only by the plaintiff, and granted the other part of the motion.

March 20.—Dobson v. Land—Part heard.

—22.—*Attorney-General v. Holmes*—Reference to settle charity scheme.

—22.—*Clay v. Rufford*—Motion refused with costs for payment into Court by defendants, of rent for premises in their occupation.

—23.—*Greene v. Ward*—Cur. ad. vult.

—21, 26.—*Afford v. Hatch*—Two issues directed for trial at law.

—25, 26.—*Wood v. Fielding*—Part heard.

Queen's Bench.

Markwell v. Dyson. Feb. 26, 1850.

ATTACHMENT FOR CONTEMPT.—CLERK TO QUEEN'S PRISON.—FEES ON HABEAS CORPUS.

Held, that the fees charged by the clerk of the papers of the Queen's Prison, of 9s. 4d. on the first action, and 2s. on each subsequent action to receive a writ of habeas corpus, are entitled to be taken, notwithstanding he now was paid by salary in lieu of fees, and which were consequently accounted for to the public, and a rule nisi for an attachment for so refusing was discharged.

A RULE nisi for an attachment had been granted (see ante, p. 187) against the clerk of the papers of the Queen's Prison, for refusing to receive, or to make a return to, a writ of habeas corpus without the payment of 2l. 17s. 4d., for fees, there being 24 detainees. The fees, which consisted of 9s. 4d. on the first action, and 2s. on each subsequent action, were claimed under the 11 Geo. 4, and 1 Wm. 4, c. 58, and the 1 & 2 Wm. 4, c. 35, under the former of which statute a Commissioner was appointed to investigate the fees paid to the officers of this Court, which were to be received until further order; and under

the latter act, the Lords Commissioners of the Treasury were authorised to frame a scale of fees, which if reasonable and had been received for 50 years, were to be legal fees; and in 1829 an account had been accordingly rendered and allowed by the Commissioners. By the act a fixed salary of 400*l.* a year was substituted for the former payment by fees of the clerk of the papers.

Cur. ad. vult.

The Court said, that notwithstanding the fees were not retained by the clerk of the papers for his own personal account, they were to be received under the 1 & 2 Wm. 4, c. 85, he being an officer of this Court, although he was not appointed by the Chief Justice but by the Secretary of State. The rule would therefore be discharged, but, as it had not been moved for with costs, without costs.

Court of Common Pleas.

Heyhoe v. Burge; Morris v. Same. June 23, 1849, Feb. 16, 1850.

DORMANT PARTNER. — EVIDENCE. — CONTRACT TO SHARE IN PROFITS OF UNDERTAKING.

Held, that an agreement entered into by the defendant, in consideration of certain monies advanced to be entitled to a fourth share of the profits of a contract for the building a railway station, was sufficient evidence to support a secret co-partnership with the contractors, and one of their creditors was held entitled to recover against the defendant.

A RULE nisi for a new trial had been obtained on the ground of misdirection, and that the verdict was against evidence in this action, which was brought by a sub-contractor for work and labour and materials supplied for building the Swaffham station of the Lynn and Dereham Railway Company. It appeared that Messrs. Fry, Frost, and Mathison had contracted to build the station, and to enable them to complete the contract had borrowed money from the defendant, the brother-in-law of Mathison, at 10 per cent. interest, and under a further agreement the defendant was to receive one-fourth of the profits of building the station. The contractors having become bankrupts, the plaintiff sought to recover against the defendant as a secret partner in the contract. The defendant not having signed this agreement, certain letters respecting the agreement were put in evidence to prove the defendant had accepted the contract. At the trial before Mr. Baron Parke, at the last Summer Assizes for Norwich, the plaintiff obtained a verdict, whereupon this rule was obtained.

Byles, S. L., Willes and Crouch showed cause against the rule, which was supported by *Channell, S. L., O'Malley and Worledge.*

Cur. ad. vult.

The Court said, that as the defendant was jointly interested under the agreement in the profits of the undertaking, it constituted a

partnership. The learned judge had properly left the whole of the evidence to the jury to decide whether there was such a contract, and as his lordship was not dissatisfied with the verdict, the rule would be discharged.

Exchequer.

Ryder v. Mills. Jan. 28, Feb. 8, 1850.

FACTORY ACTS. — HOURS OF WORK. — "SHIFT" SYSTEM.

Upon a special case, under the 12 & 13 Vict. c. 46, s. 11, as to the construction of the 3 & 4 Wm. 4, c. 103; 7 & 8 Vict. c. 15, and 10 & 11 Vict. c. 29, held, that the times of beginning or leaving off work of females and children under 18 years of age in factories, is not limited, provided such persons only work 10 hours a day. A contention for penalties under s. 63 of the 7 & 8 Vict. c. 15, was quashed.

THIS was a special case under the 12 & 13 Vict. c. 45, s. 11, as to the construction of the 3 & 4 Wm. 4, c. 103, the 7 & 8 Vict. c. 15, and the 10 & 11 Vict. c. 29. By the 3 & 4 Wm. 4, c. 103, the hours of labour of all persons between the ages of 13 and 18 were limited to 12 hours ranging from half-past 5 A.M. to half-past 8 P.M., with an hour and a-half for meals. The 7 & 8 Vict. c. 15, s. 26, provides, that the hours of the work of children and young persons should be reckoned from the time when such person should first begin to work in the morning, and which were, under the 10 & 11 Vict. c. 29, limited to 10 hours a-day after May, 1848. The schedule (C.) to the 7 & 8 Vict. c. 15, which was required to be fixed up in the factory, and signed by the occupier or his agent, contained a form stating the hours of work, with columns headed for the days, the week, and whether morning or afternoon, and these latter were subdivided into columns headed "from" and "to," in which were to be inserted the hours of work, and were added up in another column headed "total hours." The millowners employed the subjects of these enactments on the "shift" system, by which, although no person was employed for more than 10 hours per diem, the factories were kept open for more than 10 hours per day. The plaintiff, who was an inspector of factories, having laid informations against the defendant for such alleged infringement of the statute, and obtained a commitment under sec. 63, with penalties, this appeal was presented under the form of a special case.

The Attorney-General, *M. D. Hill*, and *Welsby* for the plaintiff; *Martin* for the defendant.

Cur. ad. vult.

The Court said, that as this was a penal statute, it must be construed strictly. There was nothing inconsistent in the schedule of the 26th section, which related to the times of beginning or ending work, with the workers terminating their labours, some at one hour and some at another, and the contention must therefore be quashed.

Court of Exchequer Chamber.

Governors of the Poor of the Bristol Corporation v. Reginam. Feb. 4, 6, 1866.

POOR LAW AMENDMENT ACT.—AUDITOR OF ACCOUNTS.—MANDAMUS.

Held, affirming the decision of the Court of Queen's Bench, that the Poor Law Commissioners had power under the Poor Law Amendment Act to incorporate the several parishes of the city of Bristol in one union for the purposes of that act, and that the auditor was entitled to call for an account of all rates received and expended by the corporation, notwithstanding the rates consisted of other than poor-rates.

THIS was a writ of error from the Court of Queen's Bench. A mandamus had been directed to the corporation of Bristol to render an account, under the Poor Law Amendment Act (7 & 8 Vict. c. 101), to the auditor appointed by the Poor Law Commissioners, of all moneys received by way of rate. It appeared that that corporation consisted of 19 parishes, and that

there were three rates collected, namely, the dock-rate, the corporation-rate, and the poor-rate.

Crowder and Unthank, for the plaintiffs in error, contended, that the Commissioners were not empowered under the 7 & 8 Vict. c. 101, to combine the corporation with the other parishes; that the order was invalid as being beyond their powers under the act; and that the demand of the auditor for the accounts was improper.

Tomlinson, contra.

The Court said, that until the auditor had ascertained how much was received for the different rates which the corporation were empowered to make, he could not tell how much had been received in respect of the poor-rate. As to the other objections, the Commissioners were empowered under the 7 & 8 Vict. c. 101, s. 32, to form unions and to include any number of parishes in one union, and the local act constituted the corporation the guardians of the poor for the city of Bristol, with power to make an assessment for the poor. The judgment of the Court below would therefore be affirmed.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see Jurisdiction of County Courts, p. 87. Poor Law and Magistrates' Cases, 108.]

Courts of Common Law :

Construction of Statutes, 128, 146.
Principles and Jurisdiction, 165.
Appeals from Revising Barristers, p. 189.

Courts of Equity :

Law of Attorneys and Solicitors, p. 229.
Law of Property and Conveyancing, p. 246.
Evidence, p. 289.
Law of Costs, p. 330.
Pleading, p. 371.
Construction of Statutes, 389.]

PRINCIPLES OF EQUITY.

[Concluded from p. 412, ante.]

JURISDICTION.

See Assets.

LEGATES.

Money paid into Court.—At a testator's death, J. N. owed him 4,000*l.*, but claimed to be entitled to it as bequeathed to him by the will. By an order on motion, he was ordered to pay the 4,000*l.* into Court to an account intitled "The Disputed Legacy Account of J. N.," and that sum was to be invested in stock, and the dividends were to be accumulated. At the hearing, the Court decided in favour of his claim.

Held, nevertheless, that he was entitled, not to 4,000*l.* sterling, but only to the stock and the accumulations, although, owing to a fall in the funds, they, together, were of less value than 4,000*l.* *Hyde v. Neate*, 15 Sim. 588.

LIFE ESTATE.

A testator willed that certain property should be vested in a manner most secure and least liable to fluctuation or risk, and that 3,000*l.* should be at the will of his wife at her death; but the residue he willed his wife should distribute to his relations. He made his wife residuary legatee: *Held*, that the distribution to the relations was not to take place until the wife's death, and the Court inclined to the opinion that the wife took a life estate by implication; but *held*, that, at all events, she was entitled for life under the residuary gift to her. *Hadleston v. Gouldsbury*, 10 Beav. 547.

LUNATIC.

1. *Mortgagor.*—*Issue.*—After a bill to foreclose, the mortgagor was found lunatic by inquisition, at a date overreaching the mortgage deed. At the hearing an issue was directed as to his sanity at the date of the mortgage. *Bank v. Watts*, 11 Beav. 165.

Case cited in the judgment: *Frank v. Mainwaring*, 2 Beav. 115.

2. *Inquisition.*—*Issue.*—Though the finding of a person's insanity, by inquisition upon a commission of lunacy, is not binding on third parties, still it destroys the natural presump-

tion in favour of sanity, and casts the burthen of proving the person's sanity on the party alleging it.

As to the difficulties in ascertaining a man's sanity, and the proper tests to be employed. *Snook v. Watts*, 11 Beav. 105.

3. *Infant heir-at-law*.—Opening accounts.—The infant heir-at-law of a lunatic, having no legal or testamentary guardian, appeared and consented in the proceedings in the lunacy by the same solicitor who conducted the general matters of the lunacy: *Held*, that accounts which had been passed under these circumstances, could not, on this ground alone, be re-opened: *In re Brown*, 1 M.N. & G. 201.

4. *Infant heir-at-law*.—Testamentary or legal guardian.—*Quere*, whether it is necessary for any purpose in lunacy, that an infant heir-at-law should appear by a testamentary or legal guardian, or whether there is any process in lunacy by which a legal guardian can be appointed? *In re Brown*, 1 M.N. & G. 201.

MORTGAGE.

1. *Transfer of estate pending foreclosure suit*.—*Costs*.—A mortgagee filed a bill of foreclosure, and pending the suit, transferred the mortgage to A. B., who transferred it to C. D. *Held*, that the extra costs thus occasioned were not to be charged against the mortgagor. *Coles v. Forrest, Ward v. Forrest*, 10 Beav. 552.

2. *Transfer of second mortgage to first mortgagee*.—*Costs*.—Pending a suit by a first mortgagee to foreclose, the plaintiff obtained a transfer from the second mortgagee: *Held*, that the costs occasioned were chargeable against the estate. *Coles v. Forrest, Ward v. Forrest*, 10 Beav. 552.

3. *Insolvent*.—*Assignees' costs*.—*Bill of foreclosure*.—A mortgagee had been in possession. She transferred the whole of her interest, and afterwards became insolvent. Her assignees were made defendants to a bill of foreclosure: *Held*, that their costs ought not to be charged on the mortgaged estate, but on the plaintiff. *Coles v. Forrest, Ward v. Forrest*, 10 Beav. 552.

See *Lunatic*, 1.

PARTNERSHIP.

1. By articles of partnership, it was stipulated, that in the event of such severe illness as should oblige the defendant to quit India for more than one year, the books should be made up to the end of the partnership year, and a valuation should be made of the stock. The defendant became an incurable lunatic on his way to India. He arrived there in 1841, and was sent back: *Held*, that the article contemplated a dissolution; that, according to the fair meaning of the article, the event had happened, and that his partners were entitled to a dissolution as from the end of the partnership year, 1842, and not, as contended by the defendants, from the decree. *Bagshaw v. Parker*, 10 Beav. 532.

2. *Surviving partners may purchase share of deceased partner*.—There is no such principle

in equity, that surviving partners cannot come purchasers from the representatives of the share of a deceased partner. *Chambers v. Howell*, 11 Beav. 6.

3. *Subsequent profits*.—*Extension of time by representative of deceased partner*.—Where a testator prescribes a time for realizing his share in a trading concern in which he is a partner, and his legal personal representative extends that time to the surviving partners, who have notice of the trusts, the transaction is not so entirely vitiated as to make the surviving partners accountable for the subsequent profits. *Chambers v. Howell*, 11 Beav. 6.

4. *Equal participation of profits*.—*Implied contract*.—An equal partnership implies not only an equal participation *de facto* in profit and loss, but a right in each partner to claim and insist on such participation. *Thou*, although in a case where parties had participated equally in profit and loss, the law would, in the absence of any contract, or any dealing from which a contract might be inferred, presume an equal partnership; yet this presumption would not arise if the books of the concern and the dealings of the parties showed that such could not have been the terms on which the business was carried on. *Stewart v. Forbes*, 1 M.N. & G. 137.

PATENT.

1. The doctrine laid down by the Court of Exchequer, in *Heath v. Unwin*, 13 M. & W. 593, that, if a patent has been infringed unintentionally, the patentee is not entitled to redress, disapproved of. *Heath v. Unwin*, 15 Sim. 552.

Case cited in the judgment: *Kay v. Marshall*, 1 Myl. & Cr. 373.

2. *Infringement*.—*Equitable licenses*.—*Action at law*.—*Admissions*.—A bill was filed by a patentee against parties who had agreed to purchase from the sole licensee all his interest in the patent, and who were then carrying it on; and an injunction was moved for to prevent them from violating the covenants of the deed of license. They denied the utility of the patent, and stated that they did not intend to use it. The motion stood over, with liberty for the plaintiff to bring an action at law: *Held*, that he was not entitled to any admissions from the defendants as to the validity of the patent, or as to their being licensees. *Fiddling v. Franks*, 1 H. & T. 220.

PORTION.

Life interest.—A father, on the marriage of his daughter A., gave her husband 1,500*l.* for her present portion or fortune, and he covenanted that, in case he should give his other daughter B., on her marriage or otherwise, a greater portion or fortune than 1,500*l.* in money or value, his executors would, within a year after the death of himself and wife, pay or deliver to the husband of A. such further or other sum or property as would be equal with the portion or fortune given to B. The father, on the marriage of B., gave her a portion of

1,500*l.*, and by his will, after charging his real estate with the payment of his debts, gave H. his furniture and a life interest for her separate use in some freehold and leasehold property: *Held*, that the life interest was within the covenant, but the furniture not; and 2ndly, that a debt of this nature was charged on the real estate. *Eardley v. Owen*, 10 Beav. 572.

RAILWAY.

Shareholders. — Parties. — After a railway project had been abandoned and the directors had returned some of the shareholders 1*l.* 8*s.* per share on their deposits, one of the shareholders who had received that sum, filed a bill on behalf of himself and all the other shareholders except the defendants, (who were the directors,) praying for an account of the receipts and payments of the defendants as directors; that the balance which should be found due from them might be paid into Court, and applied — 1st, in paying 1*l.* 8*s.* per share to the shareholders who had not received that sum; and that the residue might be divided amongst all the shareholders in proportion to their shares. Two of the defendants stated, in their answer, that the shareholders who had received the 1*l.* 8*s.* per share, received it in full satisfaction of their claim on the funds of the company.

Held, that the bill ought to have been filed on behalf of the shareholders who had received the payment, and that the other shareholders ought to have been made defendants. *Lovell v. Andrew*, 15 Sim. 581.

RECTOR AND VICAR.

Tithes. — By the common law, the rector has a right to all such tithes as the vicar is not proved to be entitled to, and the title of the vicar must rest either on direct proof of an endowment or on an endowment to be inferred by prescription or usage. *Attorney-General v. Ward*, 11 Beav. 203; 3*l.* C. 1 Myl. & Cr. 442.

RELEASE OF DEBT.

See *Debtor and Creditor*.

SEPARATION DEED.

Construction. — Repugnancy. — Articles of separation between John W. H. W. and Mary W. H. W., his wife, provided that all the rents, taxes, and other outgoings in respect of certain estates, which was originally the property of the latter, should be paid by the former up to a day named, and that, after that day, they should be paid by Mary W. H. W., and that John W. H. W. should be indemnified therefrom, and from all the present debts and liabilities of the said John W. H. W.

Held, that as the words in italics made the clause inconsistent with and repugnant to itself, they ought to be disregarded. *Wilson v. Wilson*, 16 Sim. 487.

NEW BOND IN CHARGE. — A charge will not pass under a bequest of property vested in "bonds or securities." *Harrison v. Gubbins*, 10 Beav. 547.

SPECIFIC PERFORMANCE.

A party who has received notice from a railway company of their intention, in exercise of powers given by the Railway Act, and the Lands Clauses Consolidation Act, to purchase his lands, may sustain a bill for specific performance of the agreement thereby created; and the court will enforce such agreement by ordering the company to take the proceedings prescribed by the statute for ascertaining the amount of purchase money and compensation. *Walker v. Eastern Counties Railway Company*, 6 Hare, 594.

Cases cited in the judgment; *Withy v. Cottle*, 1 S. & S. 174; *T. & R.* 78; *Adderley v. Dixon*, 1 S. & S. 607.

"TITHES OF CORN."

Rees and beans. — Tithes of peas and beans have been held to be comprised in the description of "tithes of corn." *Attorney-General v. Ward*, 11 Beav. 203.

See *Rector*.

TRIAL OF LEGAL RIGHT.

If, at the hearing of a cause in equity, it appears that the plaintiff has, or may have, some equity, which cannot be satisfactorily established, unless he first establishes a legal right in a legal manner, the Court delays the decision upon the equity until the legal right is established, and retains the bill for a limited period, in order that the plaintiff may in the meantime have an opportunity of establishing his legal right at law, giving at the same time such special directions as may be thought necessary, either for the purpose of removing impediments to the trial of the legal right, or saving expense by ordering the admission of undisputed facts.

But, subject to such directions, the plaintiff is to establish his right at law according to legal forms, and this Court does not consider what passes at Nisi Prius, or interfere with the trial or any of the incidents attending it.

After the case is determined at law, the regular course is, to set down the cause in equity to be heard, as it is said, on the equity reserved, and on the hearing the result of the proceeding at law is ordinarily held to be conclusive. No direction for a new trial is to be given here.

The Court, however, does not reject or abandon all attention to the proceedings at law. On a proper application made for the purpose, showing that the proceedings were such that the real question between the parties could not be tried, that the directions given by the Court were not obeyed, so that the verdict at law was obtained by means of a contempt of this Court, or that the decree giving leave to bring the action did not contain some directions, for want of which the question could not be tried in the action which was brought, the matter may be considered. In some cases, relief may be given by retaining the bill for a longer time, in order to allow a new legal proceeding to be brought; in other cases it may be necessary to bring the cause for the

purpose of procuring other directions to be inserted in the decree. *Smith v. Earl of Eppingham*, 10 Beav. 589.

Case cited in the judgment: *Stevens v. Freed*, 2 Ves. J. 522.

TRUST.

E. A. B. invested a sum of money, which was subject to the trusts of his marriage settlement, in the purchase of a real estate, and he added a sum of 500*l.* of his own: *Held*, under the circumstances, that he had devoted this sum to the trusts of the settlement for the benefit of the parties entitled thereunder. *Ouseley v. Anstruther*, 10 Beav. 461.

2. *Settled account.*—*Liberty to surcharge and falsify.*—*Opening accounts.*—*A.* died intestate in the year 1802, leaving his wife and several children surviving him. *B.*, his brother, by means of misrepresentation, procured letters of administration to be granted to him, and placed himself in *loco parentis* to the children. The youngest child attained 21 in September, 1823, and in May, 1825, he signed an account furnished him by *B.* acknowledging, in writing, at the foot of it, that he had had a satisfactory investigation of that account, and the administrator's general account of the intestate's estate and effects, and confirmed the same. In January, 1828, he received a sum appearing on the signed account, as the balance due to him in respect of his share of the intestate's estate. In September, 1843, he filed a bill seeking to open the account. At the hearing, divers errors were proved to exist in the administrator's accounts; some entries made by the administrator in his books being fictitious and some items being omitted in his accounts. Notwithstanding 17 years had elapsed since the settlement, and two years since the discovery of errors in the administrator's accounts, the Court set aside the account, and decreed the same to be taken anew, declining to limit the relief to the right to surcharge and falsify the account.

Where possible injustice, from the loss of documents or evidence, after a great lapse of time, may arise to a party, the Court will give directions to the Master to state specially any difficulty he may find on the circumstances appearing before him.

In considering whether a decree ought to be made opening accounts generally, or only to surcharge and falsify, if it be a question whether the one party is likely to suffer injustice more from one form of decree than the other form of decree, the Court ought to lean towards the side of an injured party, rather than to the side of the offending party.

The rule laid down in *Vernon v. Vandyke*, 2 Atk. 119, and followed in *Wedderburn v. Wedderburn*, 2 Keen, 722, and 4 Myl. & Cr. 41, approved. *Alfrey v. Alfrey*, 1 H. & T. 179. See *Condition*.

3. *A.*, on her marriage, assigned a debt due to her from *B.* to three trustees, upon trust, when requested by her to call it in and invest it; and hold it in trust for *A.*, her husband, and

children. *B.*, with full notice but without such request, paid part of the money to the husband by order of the trustees, and other part to the trustees for the express purpose of being advanced to the husband in breach of trust. The money was lost: *Held*, that *A.*, as well as the trustees, was responsible for the breach of trust. *Andrews v. Bonfield*, 10 Beav. 511.

4. Trustees authorized to lay out trust money in the public funds or on mortgage, invested it in mortgage. The mortgage was paid off, and the amount was received by the tenant for life, who, contrary to the trust, invested it in real estate: *Held*, that the *cestui que trust* had the option of charging the tenant for life, either with the sum sterling received, or with the amount of three per cents., which might have been purchased therewith, at the time the breach of trust was committed. *Ouseley v. Anstruther*, 10 Beav. 466.

WAY-LEASE.

Land was subject to a lease of a way-leave at a certain rent for 63 years, which the lessor had the power of determining. The land and rent were sold separately by auction in two lots, and were purchased by two different persons. After some time, the purchaser of the land entered into an arrangement with the lessee to put an end to the lease, and entered into a different one in order to defeat the right of the purchaser of the rent: *Held*, that this was contrary to equity, and the right of the purchaser of the rent was made good out of the new contract. *Wood v. Marquis of Londonderry*, 10 Beav. 465.

WARD OF COURT.

Settlement on children of future marriage.—In a settlement made on the marriage of a female ward of Court, provision must be made, out of her fortune, for the children of a future marriage. *Rudge v. Winfall*, 11 Beav. 96.

WILL.

1. A testator, after reciting, inaccurately, that his wife was entitled for life to 39,000*l.* settled on his marriage, which he stated would, at 4 per cent., yield 1,560*l.*, directed his trustees to add an annuity of 440*l.* to raise his wife's jointure to 2,000*l.*: *Held*, that the widow was entitled to have her annuity made up to 2,000*l.* at all events. *Ouseley v. Anstruther*, 10 Beav. 459.

2. *Railway shares.*—*Construction.*—A testator bequeathed some railway shares, "and all his right, title, and interest therein:" *Held*, that monies which he had paid in advance, beyond the calls, passed to the legatees. *Tanner v. Tanner*, 11 Beav. 69.

3. *Annuity.*—*Cumulative bequest.*—A bequest, by the will of testatrix, of an annuity to her "servant," *E. H.*, and a bequest by a codicil three years afterwards, of an annuity of the same amount to her "servant" *E. H.*: *Held*, to be cumulative; the word "servant" not expressing the motive, but being descriptive only. *Rock v. Callen*, 6 Hare, 531.

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MR. JUSTICE TALFOURD AND THE NEWSPAPER PRESS.

We remember no instance where the licence enjoyed by the press in commenting upon the conduct of those exercising judicial functions has been carried so far as in the repeated and continued attacks made upon one of the most humane and estimable men that ever adorned the Bench, in reference to the part taken by him when presiding at a late criminal trial at Exeter. It has been broadly stated that Mr. Justice Talfourd has proved himself unfitted for the office he holds, and that the administration of criminal justice can no longer be safely entrusted to him, because, in the discharge of his duty, he directed a jury that the evidence did not justify the conviction of two persons named Bird, charged with wilful murder. It is not insinuated, nor would the facts even remotely justify the suspicion, that the learned judge was negligent, hasty, partial, or corrupt. It is not alleged even that he overlooked, misapprehended, or misapplied any material fact deposed to by the witnesses. He is unhesitatingly pronounced incompetent to discharge the functions of a criminal judge, and no other proof is said to be necessary than his exposition of the law in the case in question.

When such allegations are made and repeated in the daily and weekly prints, it cannot be considered out of place in a work circulating almost exclusively amongst the legal profession, calmly to examine and consider whether there is any foundation for the attacks so vehemently and perseveringly urged. The undisputed facts of the case, as appears from the report contained in *The Times* of March 25, were shortly as follow:

Robert Bird, a small farmer, and Sarah his wife, were indicted for the wilful murder

of Mary Ann Parsons, by striking and beating her, and giving her divers mortal wounds and bruises of which she died. It appeared that on the 29th September last, the prisoners, wanting a farm servant, proceeded to the union workhouse, and, on the recommendation of the master, took into their service the deceased, a girl between 14 and 15 years of age, who was then, and had been for some months, an inmate of the workhouse. The girl would seem to have given satisfaction to her new master and mistress during the earlier period of her servitude, but they afterwards complained to the master of the workhouse that she was given to pilfering and lying, and he suggested that she should be corrected. In the course of the months of November and December it was in evidence that the female prisoner had beat the girl with a hazel stick, and that the male prisoner struck her with a prickly furze bush; but though the chastisement inflicted on these occasions was witnessed by men forming no part of the prisoners' family, it was not so severe or so unusual in its character as to produce any remonstrance. On the morning of the 4th January Mary Ann Parsons is found dead, and, at the request of the male prisoner, Mr. Colville Turner, a surgeon, proceeds to the prisoner's house and examines the body, and as the judge's direction to the jury depends mainly upon the result of this examination, we copy from the report the surgeon's description of the appearance the body of the child presented. He says:—

"I had the body stripped. There were several wounds on the legs and thighs, varying in extent, and apparently inflicted by some rough or irregular weapon; I thought by a birch. There were bruises on the chest and collar-bone. There was discoloration of the face. There were wounds and abscesses on the arms and fingers. The skin over the bowels was discoloured. The bruises on the

arms appeared to have been of long standing, perhaps a fortnight. There were two abscesses on the left arm; the nails of some of the fingers of the left hand appeared to have been gone for some time; the bone of the middle finger was protruding; all the nails were gone. On the right arm, above the elbow, was another abscess that had recently burst. The body was then turned over. On the right hip was a large slough the size of the palm of the hand. On the posterior part of the hips were several wounds, which appeared to have been inflicted some time; they were covered with plaister. On the shoulders there were two trivial bruises. The outer layer of the skin of the back was separated from the inner, the result of the blood having been poured out between the two layers of skin after death. It appeared to me that the child had been dead some days; this was on the Saturday. The weather was extremely cold, which would retard the symptoms of decomposition. I then made a *post mortem* examination. I had previously seen a discoloration of the skin from the forehead down the cheek. On removing the scalp, I discovered another bruise on the back part of the head; there was considerable extravasation of blood. On removing the skull, I found the membranes of the brain considerably congested; the skull was perfectly sound: at the base of the brain there was extravasation of blood. I then examined the chest, the contents of which were perfectly healthy, with the exception of a slight adhesion of the right lung to the side; the stomach was perfectly empty, and the different organs were perfectly healthy. The external injuries to the head were the cause of the death. I could not form a judgment how that violence had been inflicted. The condition of that child must have been extremely reduced. The nervous system would be affected. There was no bruise to correspond with the kick mentioned by the old man.

"Cross-examined.—The extent of these wounds, even by a birch, would have affected the nervous system. The loss of the nails might have been the result of frost-bites. A fall might have produced the appearance on the hip. The appearances in the head were the same as in cases of apoplexy. A congestion of the brain coming on from natural causes would make a person giddy, and make her likely to fall. The symptoms I have heard of giddiness, sleepiness, and dislike of light, would show an incipient congestion of the brain. Irregularity of circulation would indicate lowness of the system. Wounds after death present a worse appearance than they do before. The appearances I observed could not have been exhibited within 30 hours' after death.

"Re-examined.—I think the child must have been dead at least three days.

"By the Judge.—I consider the internal appearances to have arisen from external injury."

A second surgeon, who was examined, concurred in the opinion of Mr. Turner, and stated that a fall on the fender might

have produced the wound on the head; and a languid circulation might have produced congestion of the brain, the lungs, and the liver. The only remaining evidence against the prisoners was that derived from their own admissions to the mother of the deceased child, and to other persons. The mother says:—

"Mr. Bird told me that he found the child dead on Friday morning. Mrs. Bird said that she night before she died the child was upstairs and called out for water, and had then come into the kitchen for some water, and had fallen down twice. The child said, 'I don't know what's the matter with me, I be like one tipsy, but I am not, am I?' The child then, by her direction, went upstairs. Both Mr. and Mrs. Bird afterwards went upstairs, as the child called out; that he lifted the child out of bed for a purpose, and in doing this a place on the child's arm broke; that she asked the child how she was, and she said she was very sleepy, and when all was quiet she thought she should be able to sleep a bit. Mrs. Bird then went down stairs again, and returned, and the girl then complained that her legs were very cold. She then had put a jar of hot water to the child's feet and legs. She, after this, found the child's hands and arms were cold, and she got some more hot water and put to her arms; that, in some part of the night, she told Mr. Bird to go and see if Mary were dead, as everything was quiet. He went and looked at her; she looked very smiling, but he had not spoken to her. Mrs. Bird then went to the child. She found she had not moved at all. Mrs. Bird spoke to an old man who slept in the same room with the child, and said, 'I think Molly is dead.' The old man said he thought she was dead, as he had spoken to her several times and she had not answered."

Such being the facts of the case, the only question is, whether there was evidence which could fairly have warranted the jury in coming to the conclusion that the death of the child was caused by blows or wounds inflicted by one or both of the prisoners? The evidence of the surgeon was, that "the external injuries to the head were the cause of death." By whom was that injury inflicted? As soon as the evidence had concluded, the learned judge seems to have asked himself this question, and then repeated it to the learned counsel for the prosecution, (Mr. Rowe.) The report thus describes what occurred on this point:—

"Mr. Justice Talfourd then asked Mr. Rowe what he desired him to leave to the jury as the cause of the death? The result of the medical testimony was that a blow upon the head was the cause of the death, and not the injuries to other parts of the person. What evidence was there that either of the prisoners had inflicted that blow."

"Mr. Rowe said, that the death might have arisen from insipient congestion of the brain, caused by a long series of ill usage, and that the last of that series was the fall which had produced the external appearance on the skull.

"Mr. Justice Talfourd said there was no proof of the injury having been inflicted by both of the prisoners, or by one more than the other. The jury could not leap in the dark to find one guilty because they thought one had done the act.

"Mr. Rowe had no wish to press the case, but he thought there was evidence of an assault.

"Mr. Stode said that that assault must have referred to something that was contained in the indictment, as to the cause of death. The whipping had no reference to that."

Under these circumstances, the learned judge is reported to have addressed the jury in the following terms. The accuracy of that report we have no means of ascertaining, but it is manifestly a condensed report of what fell from him, and does not profess to give the precise language used:—

"This case had involved a most serious and painful inquiry, and he was desirous that it should proceed to its legitimate termination; and if he could have stated any facts for their consideration he should have felt it his duty to have done so, whatever impression he might have formed in his own mind, because no one could have heard the evidence without feeling it to be a case of the most painful interest. Here was the case of a young girl, who, it appeared, on the 29th September, was in the union workhouse, and was taken from that workhouse by the two prisoners, they being a farmer and his wife, to be their farm servant. At the time she went into that service she had been a child of cleanly habits. Her mistress afterwards stated that she was a good honest girl, and was going on well, and then afterwards some fearful change came over the transaction. She was seen to receive chastisement of which he did not approve, but which, taken singly by itself, might have excited little regard. She then appeared to have failed in health, and was seen for the last time alive on the 26th December; and she was found dead on the 5th January. These were the facts beyond all doubt, and beyond all doubt, upon an examination of her person, injuries were found to have been sustained of a very lamentable kind. Under these circumstances a medical gentleman was called in, and he had entered into a minute examination of the case, and, if the injuries had been directly contributory to the death, so as to have been its cause, they would have had to consider the conduct of the prisoners; but, in order to maintain an indictment for murder or manslaughter, it must be made out that the unlawful act was the cause of the death. The medical gentleman had stated the cause of death to have been a pressure of blood upon the brain; and, being asked how he accounted for that congestion, he said

he attributed it to the injury upon the back of the head, produced either by a blow or fall. Then they had arrived at this, that whatever ill-usage this poor child might have received, there was no proof of the cause of her death. If it had proceeded from a kick or a blow inflicted by either of the prisoners, no doubt that would have been murder or manslaughter, according to the particular circumstances of the case. The difficulty they were in was this, there was no proof of who it was that gave that blow. It was very true they might suspect it was given by one or other of the prisoners; but, in the absence of all proof he could not direct them that there was evidence to fix it upon one of these parties more than the other. Each had chastised the girl, and either might have inflicted the blow which caused the death. He could not direct them that there was anything to lead them to connect one more than the other of the prisoners with that which was clearly the cause of death. The case was one which presented considerations which he confessed made him regret that he was not in a situation to place it before them, and he greatly deplored that the case was of necessity left in that state of uncertainty that he could not direct them that there was evidence of either prisoner having inflicted the blow; therefore he was bound to tell them that the case for the prosecution had failed. If the death had been occasioned by privation, or want of food, then the male prisoner alone would have been responsible; if it had been proved to have been occasioned by a succession of injuries, which they might infer from the state of the body, then there would have been a case to go to them if the death had been occasioned by an accumulation of wrongs and injuries. It seemed to him that the case had failed, and therefore, much to his regret, without expressing any opinion as to what the result might have been, he was bound to tell them that there was no case upon which they could safely convict, and consequently the prisoners must be acquitted."

There is no person acquainted with Justice Talfourd's fluent and felicitous diction, who can even for a moment suppose that the extract we have copied is a verbatim report of what fell from him. Indeed it does not profess to be so; but assuming it to be substantially correct, we ask any impartial and disciplined mind,—any man who prefers the criminal law as it exists in England, to what is known elsewhere as "Lynch Law,"—in what respect the learned judge has erred? The question was not whether the prisoners had treated the pauper child harshly and inhumanly, nor whether their conduct in this respect rendered them amenable to the laws of the land? The only question the jurors were sworn to try was, whether the prisoners had inflicted blows on the child which produced

death. The medical man who examined the body attributed the death of the girl to an injury on the back of her head. Whether the injury was the result of a blow or a fall he could not conjecture. There was some evidence that the deceased had fallen, there was no proof that she had received any blow on the back of the head.

The only legal principle laid down by the learned judge was, that to sustain an indictment for murder or manslaughter, there must be *satisfactory evidence that the unlawful act charged caused death*. Will any man cognizant of the principles of our criminal law, say that this is an erroneous doctrine? We apprehend not. The deceased was cruelly and brutally used by the prisoners some time before her death. The feelings of manhood and of humanity were arrayed against those who had inflicted such severities upon a hapless child. Without meaning to disparage the institution of trial by jury, we may be permitted to say that this is precisely the case which should not be left altogether to the discretion of twelve men indifferently selected. Professional experience satisfies us that in such a case, if left wholly to the influence of their own impulses, a jury would have convicted upon any testimony however slight. It was precisely the case where the weight and influence of a judge is most necessary and most valuable. The prisoners were undoubtedly guilty of a grave offence, an offence for which they are still liable to be tried and severely punished. They were not shown to be guilty of the crime with which they were charged upon this indictment. No criminal lawyer has yet ventured to assert that upon the evidence they ought to have been convicted of murder or manslaughter, and the learned judge has nobly vindicated the law by interposing its authority, and, by the emphatic declaration of its principles, saving two fellow creatures—it may be justly abhorred and execrated—from the speedy and ignominious death to which the verdict, if not influenced by the direction of the learned judge, would have inevitably consigned them.

THE STAMP DUTIES BILL.

THIS Bill recites the 55 Geo. 3, c. 184, and the 5 & 6 Vict. c. 82, and by the 1st section repeals the stamp duties specified in schedule A., from the 5th July next.

By the 2nd section, the stamp duties in schedule B. are granted.

They consist of the following six kinds of

stamps, and the future amount will be as here specified:—

<i>Bonds</i> —not exceeding 50 <i>l.</i> . . .	5 <i>s.</i> 0 <i>d.</i>
not exceeding 100 <i>l.</i> . . .	10 0
above 100 <i>l.</i> , per cent. . .	10 0
<i>Conveyances</i> —not exceeding 25 <i>l.</i> . . .	2 6
Increasing 2 <i>s.</i> 6 <i>d.</i> on each 25 <i>l.</i> up to 200 <i>l.</i>	
Then increasing 5 <i>s.</i> on each 50 <i>l.</i> up to 500 <i>l.</i>	
From 500 <i>l.</i> to 1000 <i>l.</i> , an increase of 15 <i>s.</i> per cent.	
And above 1000 <i>l.</i> , 1 <i>l.</i> per cent.	
<i>Leases</i> —Rent not exceeding 25 <i>l.</i> . . .	2 <i>s.</i> 6 <i>d.</i>
Increasing 2 <i>s.</i> 6 <i>d.</i> on each 25 <i>l.</i> to 100 <i>l.</i>	
Above 100 <i>l.</i> for each 50 <i>l.</i> . . .	5 <i>s.</i>
<i>Mortgages</i> —Not exceeding 50 <i>l.</i> . . .	5 <i>s.</i>
Not exceeding 100 <i>l.</i> . . .	10 <i>s.</i>
Above 100 <i>l.</i> per cent. 10 <i>s.</i>	
<i>Settlements</i> —Not exceeding 100 <i>l.</i> . . .	5 <i>s.</i>
Above 100 <i>l.</i> per cent. 5 <i>s.</i>	
<i>Warrants of Attorney</i> —Same as Bonds.	

To which are added Deeds of Covenant for payment of Money, which are to have the same stamps as Bonds.

The duties granted are by the 3rd section to be denominated stamp duties, and to be under the care of the Commissioners of Inland Revenue, and the powers of former acts are continued for enforcing the payment of the duties.

The 4th section repeals so much of 4 & 5 Vict. c. 21, s. 1, and 8 & 9 Vict. c. 106, as impose the stamp duty on leases for a year.

The 5th section enacts, that persons evading the stamp duties shall be liable for the amount, and the Court of Exchequer is authorized to grant a rule for payment of the duties, and to refer the matter to an officer of the Court to examine the parties and enforce payment by attachment.

The 6th section provides, that where any deed or instrument liable to stamp duty shall be executed before payment of the duty, there shall be payable, over and above the duty or deficiency of duty, by way of penalty, the following sums:—

£10, if the whole amount of duty or the deficiency shall not exceed 10*l.*

And if the duty or deficiency exceed 10*l.*, then a sum equal to the amount of the duty or deficiency.

And the Commissioners are required, upon payment of the duty or deficiency and of the sum of 10*l.*, or (as the case may be) of the sum equal to the amount of such duty or deficiency, by way of penalty, to cause such deed or instrument to be duly stamped; and no such deed or instrument shall be pleaded or given in evidence in law or equity until the same shall be duly stamped: Provided, that where it shall appear to the Commissioners, upon oath or otherwise, that any deed or instrument hath not been duly stamped previously to being signed or executed by reason of *accident, mistake, inadvertency, or urgent necessity*, and without any wilful design or intention to defraud the revenue, or to evade or delay the payment of such duty, then, if such deed or instrument shall, within *twelve calendar months* after the first signing or executing of the same

by any person; be brought to the Commissioners, and the stamp duty chargeable shall be paid, the Commissioners may remit the whole or any part of the penalty, and cause such deed to be duly stamped.

By the 7th section the Commissioners may stamp instruments executed abroad, without any penalty, if brought within two months after their arrival.

The 8th section repeals the 9 Geo. 4, c. 27, s. 4, imposing a penalty on vendors of receipt stamps charging for paper.

TRANSFERS OF MORTGAGES.

The following appears to be the result of the decisions on this subject, as stated in Mr. Tilsley's Treatise on the Stamp Acts:—

1. A transfer of mortgage where a further sum is advanced, is liable only to *ad valorem* duty on further sum, and progressive duty of 20s.

2. A transfer of mortgage where a further security is given for the original sum either by the addition of other property, or by an enlarged estate in that originally mortgaged, is chargeable with a common deed duty of 35s., in respect of the further security, in addition to the transfer stamp of the same amount, and progressive duties of 25s.

3. Where a further sum is advanced, whether on the occasion of a transfer or not, and additional security given as in the last proposition, the proper stamps will be the *ad valorem* duty on the further sum; and a common deed stamp of 35s. in respect of the additional security, with progressive duties of 20s.

ADDITIONAL STAMPS.

A correspondent expresses his hope that the profession will raise its voice against, and that the Incorporated Law Society will not be inattentive to, the attempt which is about to be made—that where a security is stamped after execution it shall only take effect from the day on which it is stamped.

It is utterly impossible (as he justly says) to foresee a title of the litigation that such a provision must unavoidably produce.

DEPOSIT OF TITLE DEEDS.

The enactment in Schedule B., requiring mortgage stamps on any agreement or other writing accompanied with a deposit of title deeds, or any writing relating to any property, matter, or thing, is objectionable, on the part of the public, not of the profession, because it will render illegal an enormous amount of transactions with bankers, where deeds, policies of insurance, bills of lading, or other securities are deposited for temporary loans.

The enactment ought, at all events, to be confined to cases in which the time of loan exceeds twelve months, because the expense of a mortgage for a shorter time would be a heavy burden upon the borrower, and be injurious to commercial credit.

DEFECTS OF THE SUPERIOR COURTS.

An ~~article~~ has just been published by Mr. Bulmer, a solicitor at Leeds, addressed to the members of that borough, on "the necessity of a change in the practice and proceedings of the Civil Courts of Justice in England, with some suggestions for effecting it."¹ Mr. Bulmer confines his letter to the Superior Courts. With regard to those of the *Common Law*, he observes, that their principal defects are:—the pleadings;—the hurried manner in which causes are obliged to be tried at the assizes and compulsory references;—and the want of means for the proper investigation of a class of cases strictly within their cognizance.

Mr. Bulmer has selected, by way of example of the evils he seeks to remove, the following instances:—

"In *Corbett v. Packington*, (6 Barn. & Cress. 268,) the plaintiff failed for what is called misjoinder of counts, because his pleader had added a count in assumpsit to a count in trover; that is, he had stated the cause of action in two different ways.

"In *Cornish v. Keen*, (3 Bing. N. C. 570,) the pleadings were drawn by one counsel and settled by two others, Mr. Serjeant Stephen, the author of the best work on pleading, being one. The trial lasted three days, and the plaintiff got a verdict. His taxed costs exceeded 1,000*l*. The defendant, not being prepared to pay them, applied to a pleader to find a defect if he could in the pleadings, which might be argued in order that the defendant might get time. Notwithstanding the care with which the pleadings had been settled, the defendant's pleader found a defect for argument. It was a patent case, and the declaration stated that the patent had been *duly* assigned. The defendant's pleader alleged that it ought to have stated that the patent was assigned by deed, and not duly assigned, as patents can only be assigned in that manner. This objection was argued in the Exchequer Chamber, and the Court decided against it on the ground that it could not be taken after trial; but the reason given was so unsatisfactory that the case was carried by writ of error to the House of Lords. Here it was compromised, but the 1,000*l*. costs were never paid.

¹ London: Longman & Co. — Leeds: R. Sleecote.

As a remedy to some extent for this mischief, Mr. Bulmer suggests:—

"That either a plaintiff or defendant should be at liberty, previously to the trial, to take out a judge's summons, on affidavit showing the nature of the action, for his opponent to show cause why the case should not be referred. And in case the judge should be of opinion that the case was of such a nature that it ought to be referred, then the judge should have power to make an order of reference, and, if the parties could not within a limited time after such order agree upon a referee, also power to name a referee."

The want of means to investigate certain cases, Mr. Bulmer proposes should be remedied by the appointment of an officer of the Court to whom all matters of account should be referred. At present, he observes, whenever there are long and complicated accounts in dispute, the Courts of Common Law have no practical means of investigating them.

The defects in the *Court of Chancery* are thus described:—

"The dilatoriness of its proceedings—the dreadful expense to which its suitors are unnecessarily subjected—the inefficient manner in which it receives its evidence by the written examination and pretended cross-examination of witnesses—the absurd way in which it examines accounts, and transacts the greater portion of the business in the Masters' offices, have caused this Court to become a reproach to the nation. Without a little fortune in hand no one, however great or just may be his claim, can resort to it for redress. To the poor man and even to a man of moderate means it practically denies justice.

"The inconsistency of the proceedings in the Courts of Chancery with those of the Courts of Common Law cannot be more pointedly shown than in their modes of taking evidence. In the Courts of Common Law neither the plaintiff nor the defendant can be examined. In the Court of Chancery the defendant is bound to answer on oath every question the plaintiff puts to him. In the Courts of Common Law a witness is examined in the presence of the parties and the public. In the Court of Chancery he is examined in the absence of the parties, and in secret, the examiner himself being sworn to secrecy. In the Courts of Common Law the examination is conducted by an advocate, *viz. voce*, who is allowed to put any questions pertinent to the subject in dispute which the testimony of the witness suggests. In the Court of Chancery the questions are reduced into writing before the examination of the witness, and the evidence is confined to these questions alone. In the Courts of Common Law the witness is cross-examined by an advocate who hears his testimony, and who calls for explanations of any discrepancy there may be in it, and information

wherever he suspects there is a *suppression veri*. In the Court of Chancery the cross-examination is conducted by means of written questions, prepared beforehand, without knowing who the witness is or what his testimony may be. If it is suspected that A is likely to be a witness called by the opponent, questions for his cross-examination are prepared in writing on what is conjectured he may be likely to say. The questions for cross-examination are therefore guesses upon guesses. A guess who may be the witness, and a guess what he may say."

Mr. Bulmer illustrates the virtual denial of Justice in the Court of Chancery by the following cases which have occurred in his own practice:—

"A poor man was entitled to a legacy of £100, under the will of a relative. He had applied several times to the trustee for it in vain, and then came to me. I wrote to the trustee, but he took no notice of my letter. The only redress (which is generally the case with legacies) was in the Court of Chancery. For a poor man to think of going there, and that for £100, was quite out of the question. The trustee knew this, and being an unprincipled person, set the poor fellow at defiance.

"In another case, a client who is in the middle rank of life, having a small independent fortune, was entitled to the residuary estate of a testator. The surviving executor did not openly set this gentleman at defiance, but alleged that there was no residue, although my client was in a position to prove that the executor must have about £500 in his hands. To have enforced my client's claim, however, the whole of the executorship accounts must have been taken in Chancery, and rather than have recourse to such a remedy, particularly as the circumstances of the trustee were doubtful, I felt bound to advise my client to submit to the loss of the money. His limited yearly income could not bear the expense of a chancery suit.

"In another case, an individual trustee of a turnpike road was sued and compelled to pay a sum of about £3,000 on account of the expenses of the road. About thirty other trustees had acted; but he selected seven, and filed a bill in chancery against them for contribution, throwing upon the seven the responsibility of fixing such others as they might choose to make defendants. There was no doubt many of the other trustees were to some extent liable; but the danger of making so many persons parties to the suit (which would have required a bill of revivor on the death or bankruptcy or insolvency of any), and the expense which would have attended ten or twelve issues at law to have tried the extent of the liability of each trustee, were so great, that the plaintiff and the seven trustees selected, though men of property, were advised to pay the whole debt rather than proceed against the other trustees.

"In the last case I shall mention, 2 and 3

divided an estate, entering into mutual covenants by which the owner of each share would be benefited. A's estate devolved upon his heir; B's estate was sold; and the purchaser, though aware of the covenants to which the estate was made liable by B, refused to perform them, at the same time availing himself of the benefit of the covenants entered into by A. The opinion of an eminent counsel being taken, he advised that the burden of B's covenants did not as common law ran with the land but were personal only, and consequently that the purchaser of his estate was not bound by them; and that A's heir would be obliged to have recourse to the Court of Chancery to obtain redress.

"On inquiry I found that both estates were in settlement, and that several tenants for life, trustees, minors, and persons in remainder, would all have to be made parties to the chancery suit. Representing this to my counsel, and telling him that the damage to my client's property by the non-observance of the covenants by the purchaser of B would be about 1,500*l.*, he advised, as a matter of expediency, that this loss should be submitted to, rather than embark in such a chancery suit as would be necessary for obtaining redress."

It is justly observed by the author that the interests of the client and solicitor are identical, and that the solicitor who promotes the best interests of his clients will ultimately promote his own. We, however, entirely concur with Mr. Bulmer in the opinion that a system of experimental and ill-digested legislation will but increase the evils which exist. He says:—

"Though desirous of extensive legal reform, particularly in the Court of Chancery and the Ecclesiastical Courts, I am no advocate for the perfect schemes of visionary theorists. Every system of judicial administration must be more or less defective. Truth and justice cannot be attained without investigation, and this necessarily involves a loss of time, trouble, and expense.

"What is wanted is the best practical system; and this can only be learnt by consulting practical men, those whose lives are spent in carrying out the administration of the law; to whom the public have recourse for advice in every case of difficulty; and whom they must employ whenever a right has to be enforced. None can possibly know, so well as these, where the defects in our present system are, nor to what extent they are capable of real improvement.

"The reports of the sub-committees of the Metropolitan and Provincial Law Association are those of experienced men, thoroughly versed in these subjects, and, as such, deserving of the serious attention of the legislature. Many most valuable suggestions will there be found, by adopting which the evils of crude and experimental legislation (which has for some time past characterised the attempts to effect law reform) will be avoided.

"In addition to the danger arising from the legislation of experimentalists practically unacquainted with the administration of the law, an advocate for an efficient law reform has also to fear the treachery of false friends,—men who under the pretext of effecting a public good are providing for private interests in the shape of place and patronage."

With this we must conclude. Amidst the changes which are taking place, we deem it useful to bring under the notice of our readers the several suggestions which are made by practical men, and we commend to their perusal the remainder of Mr. Bulmer's able pamphlet.

PERIODICAL LIST OF NEW BOOKS

A Practical Treatise on the Law of Contracts not under Seal, and upon the usual Defences to Actions thereon. By Joseph Chitty, jun., Esq. The Fourth Edition. By J. A. Addison, B.A., of Gray's Inn, Barrister-at-law. S. Sweet, 1850.

This is a carefully revised edition of Mr. Chitty's well-known work on Contracts.

A Practical Treatise on the Law relating to The Specific Performance of Contracts. By Edmund Batten, Esq., Barrister-at-law. Bencning and Co. 1849. Pp. 410.

This is a useful treatise on an important and practical subject, bringing the authorities down to the present time.

An Essay on the Principles of Circumstantial Evidence, illustrated by numerous cases. By William Wills, Esq. Third Edition. H. Butterworth. 1850. Pp. 254.

A review of this valuable volume will be found at p. 416, *ante*.

The Bankrupt Law Consolidation Act, 1849, (12 & 13 Vict., c. 106.) With copious Notes of Cases on the Law of Bankruptcy, applicable to the construction of that act, with the General orders in Bankruptcy. By Leonard Shelford, Esq., Barrister-at-law. W. Maxwell, (late A. Maxwell and Son.)

For a notice of this work, see 77 *ante*.

A Treatise on the Law and Practice of Some Facies, on Judgments, Crown bonds, and Recognizances, with an Appendix, containing forms of Affidavits, writs, plead, and realisations. By Edmund Meares Kelly, Esq., A.M., Barrister-at-law. Second Edition. Bencning and Co. 1849. Pp. 280.

This is a useful treatise on the new and important branch of law to which it relates.

The Magisterial Formulist, being a complete Collection of Magisterial Forms and Precedents for practical use in all matters out of Quarter Sessions, adapted to the Outline of Forms in Jarvis's Acts, 11 & 12 Vict., c. 42, 43, with an Introduction, Explanatory Direc-

tions, Variations, and Notes, brought down to 12 & 13 Vict. By *George C. Oke*, author of "The Magisterial Synopsis." Henry Butterworth. 1850. Pp. 543.

For a notice of this Collection of Forms, see p. 381, *ante*.

Contributories, their Rights and Liabilities under the Winding-up Acts 1848 and 1849, with the Statutes and Notes. By *Oliver William Farrer*, Esq., of the Inner Temple, Barrister-at-law. W. Maxwell, Bell Yard. 1850. Pp. 212.

This useful treatise has been noticed at p. 362, *ante*.

The Law of Joint 'Stock Companies' Accounts, and the Legal Regulations for their adjustment in Proceedings at Common Law, in Equity, and Bankruptcy, and under the Winding-up Acts of 1848 and 1849, intended as an accompaniment to the "Law of Mercantile Accounts." By *Alexander Pulling*, Esq., of the Inner Temple, Barrister-at-law. H. Butterworth. 1850. Pp. 80.

The Law and Practice of Benefit Building Societies, Terminating and Permanent, and of Freehold Land Societies, with all the cases decided to this time, Rules, forms of mortgages, pleadings, and other matters. By *John Thompson*, Esq., of the Inner Temple, Barrister-at-law. J. Crookford. 1850. Pp. 268.

An Adaptation of Jones's Attorneys' and Solicitors' Pocket Book, and Conveyancers' Assistant to the Law of 1850. With additional Notes and Forms. By *Rolla Rouse*, Esq., of the Middle Temple, Barrister-at-law, author of "The Practical Man," "Mortgage Precedents," &c. W. Maxwell. 1850. Pp. 84.

Mr. Rouse has succeeded in rendering the seventh edition of Jones's well-known compendium applicable to the present state of the law.

Letters on Special Pleading; being an Introduction to the study of that Branch of the Law. Second Edition, revised and enlarged. By *Joseph Phillips*, Esq., M.A., of the Inner Temple, Special Pleader. Benning & Co., Fleet Street. 1850. Pp. 96.

Useful to the student, and opportunely published at a time when important alterations are contemplated in the practice to which the work relates.

The Practical man; or Legal and General Pocket Companion. Giving nearly 300 carefully prepared Forms in Legal Matters requiring prompt attention, and a complete collection of Tables and Rules applicable to the Management of Estates and Property, and the Calculation of all Values dependent on Lives, Reversions, Terminable Payments, &c. With County Court Practice and Forms, New Bankruptcy Forms, Malt Duty Return Proceedings. Tables remodelled and extended generally, and the insertion of New Tables of

the value of Two Joint Lives, according to the Government probabilities of Life, and distinguishing Male and Female Lives. Sixth Edition. By *Rolla Rouse*, of the Middle Temple, Esq., Barrister-at-law, author of "Copyhold and Court-Keeping Practice," "Mortgage Precedents," &c. &c. London: W. Maxwell (late A. Maxwell & Son). 1850. Pp. 324.

See p. 460 *ante*, for a statement of the contents of this useful work.

An Improved System of Solicitors' Book-keeping, with Forms of the several Books, a Practical Exemplification of their working, and Division of Profits and Losses in Cases of Partnership; Directions for Posting, Balancing, &c. By *George C. Oke*, author of "The Magisterial Synopsis." London: Henry Butterworth. 1850.

Solicitors need many helps in properly keeping their own accounts, and investigating the accounts of others. Mr. Oke's work is a useful addition to this class of publications.

Inquiry into the Rise and Growth of the Royal Prerogative in England. A New Edition, with the author's latest corrections. Biographical notices, &c., to which is added an Inquiry into the Life and Character of King Eadwig. By *John Allen*, Esq., late Master of Dulwich College. Longman. 1849. Pp. 268.

This is a work of much learning and research.

Parallels between the Constitution and Constitutional History of England and Hungary. By *J. Toulmin Smith*, Esq., of Lincoln's Inn, Barrister-at-law. Effingham Wilson. 1849. Pp. 85.

An interesting work, especially at this time of constitutional change.

The Laws relating to the Land Tax; its Assessment, Collection, Redemption, and Sale; with a Statement of the Rights and Remedies of Persons Unequally Assessed, and an Appendix containing all the Statutes in force, with a copious Index. By *Samuel Miller*, Esq., Barrister-at-law. S. Sweet. 1850.

The Speech of Mr. *Sergeant Merewether* in the Court of Chancery, Saturday, Dec. 8, 1849, upon the Claim of the Commissioners of Woods and Forests to the Sea-shore, and the Soil and Bed of Tidal Harbours and Navigable Rivers: the nature and extent of the Claim and its effect upon such Property. H. Butterworth. 1850. Pp. 48.

A very learned and ingenious disquisition by the Town Clerk of the city of London.

Counsel to Inventors of Improvements in the Useful Arts. By *Thomas Turner*, of the Middle Temple. F. Elsworth. 1850. Pp. 101.

A very able work.

Catalogue of Books on Foreign Law, founded on the Collection presented by *Charles Purton Cooper*, Esq., to the Society of Lincoln's Inn.

—Laws and Jurisprudence of France. Printed by Roworth and Sons. 1849. 'Pp. 435.

This catalogue is valuable both for its contents and its method of arrangement.

Questions for Law Students, on the Third Edition of Ayckbourn's New Chancery Practice. By John Southam, Solicitor in Chancery. H. Butterworth. 1850. Pp. 154.

COURT OF CHANCERY,

SALARIES AND COMPENSATIONS.

By a Return to the House of Commons, just printed, it appears—

1. Total sum due or paid for salaries and office expenses under the 5 & 6 Vict. c. 103, in the Court of Chancery, since the passing of the act up to the 25th of November, 1849, 230,657*l.* 16*s.* 3*d.*

Total sum paid for compensation for loss of offices and profits to officers under the same act, since the passing thereof up to the 25th day of November, 1849, 287,176*l.* 0*s.* 10*d.*

2. Total sums paid to each of the late Sworn Clerks appointed Taxing Masters, for salary and compensation under the same act, since the passing thereof up to the 25th day of November, 1849:—

To George Gatty,—salary, 10,027*l.* 3*s.* 5*d.*; compensation, 37,085*l.* 5*s.* 9*d.*

To Henry Ramsay Baines,—salary, 14,027*l.* 3*s.* 5*d.*; compensation, 36,499*l.* 19*s.* 10*d.*

To John Wainwright,—salary, 14,027*l.* 3*s.* 5*d.*; compensation, 28,056*l.* 3*s.* 10*d.*

To Richard Mills,—salary, 14,027*l.* 3*s.* 5*d.*; compensation, 32,126*l.* 13*s.* 6*d.*

These sums are included in the total sums due and paid for salaries and compensation for loss of office, &c.

The sum total is 165,876*l.* 16*s.* 7*d.*

3. Annual amount of compensation awarded to each of the Taxing Masters, under the Act 5 & 6 Vict. c. 103, in the event of their ceasing to hold the said office, and of the annual sums to be paid to the personal representatives of each of them as compensation after their deaths, and for what number of years after their deaths such payments to their personal representatives are to continue out of the Sutors' Fee Fund.

Baines, Henry Ramsay,—yearly, 5,403*l.* 2*s.* 9*d.*; for seven years after death, 2,701*l.* 11*s.* 5*d.*

Gatty, George, yearly,—5,424*l.* 14*s.* 4*d.*; for seven years after death, 2,712*l.* 7*s.* 2*d.*

Mills, Richard, yearly,—4,938*l.* 9*s.* 7*d.*; for seven years after death, 2,467*l.* 14*s.* 10*d.*

Wainwright, John,—yearly, 4,500*l.* 5*s.* 1*d.*; for seven years after death, 2,250*l.* 2*s.* 7*d.*

¹ This sum includes 48,554*l.* 17*s.* 6*d.* paid to stationers for copying, &c.

There are a few other expenses incurred between Christmas, 1848, and 25th November, 1849, for which the accounts have not yet been brought into the Masters' offices.

LAW STUDENTS' DEBATING SOCIETY.

THIS Society, whose questions for discussion at the ensuing weekly meeting appear in another part of this number, meets at the Law Institution. It numbers between 30 and 40 members, and bids fair to be the best school for improvement which an articled clerk or a young solicitor can join. We do not refer merely to the habit of speaking in public, although that is important and is daily becoming more so, but what to the student is of the first importance, it affords an excellent legal exercise. We understand that many of the members are enabled by practice and perseverance to conduct a legal argument in a manner which would surprise their seniors.

We can only say, that we wish it every success. Its importance is great, looking at what the course of legislation is likely to require from solicitors, and we thus draw attention to it in order that those who desire to avail themselves of its advantages may know of its existence.

The Society has been established for the last 14 years, under the patronage of the Incorporated Law Society.

SELECTIONS FROM CORRESPONDENCE.

SALE OF CHURCH PATRONAGE BELONGING TO CORPORATIONS.

By the 5 & 6 Wm. 4, c. 76, the Ecclesiastical Commissioners are directed to sell advowsons belonging to municipal corporations, at such time and in such manner as the Commissioners may direct, so that the best price may be obtained for the same.

Are the Commissioners justified in selling such advowson by way of tender without putting them to public competition on a certain day?

C.

BANKRUPTCY LAW AMENDMENT.

Some years ago, I was interested in the estate of a bankrupt to whom upwards of 80,000*l.* was owing. Circular printed letters were written to the debtors by the official assignee, who in about a month received at least 30,000*l.*, for which he was allowed 4,000*l.*, being at the rate of 5*l.* per cent.—a monstrous allowance! but such is the system.

The charge of a solicitor for the like services would not have exceeded 20*l.* or 30*l.*; but an official assignee thought it just and reasonable, and said he, "We should not get paid sufficiently without such windfalls."

ONE, &c.

RECENT DECISIONS IN THE SUPERIOR COURTS,

AND SHORT NOTES OF CASES,

Lord Chancellor.

In re Gaffee's Trust. Feb. 25, 1850.

MARRIAGE SETTLEMENT.—CLAUSE AGAINST ANTICIPATION.—PRESENT AND FUTURE MARRIAGE.

Held, reversing the decision of the Vice-Chancellor, 37 L. O. 319, that the clause against anticipation in the petitioner's marriage settlement was not confined to the then existing coverture, but to any subsequent one, and that therefore the annuities charged thereon by herself and her second husband were not valid charges upon the fund.

THIS was an appeal from the Vice-Chancellor, (reported, *ante*, vol. 37, p. 319). Upon the petitioner's marriage with Benjamin Gaffee, in 1811, a post-nuptial settlement was executed on 29th May in the same year, and a portion of her fortune conveyed to trustees upon trust, to pay the income to such persons as she should from time to time appoint, but not by anticipation, and in default of such appointment, to her for her separate use, notwithstanding her coverture, and independently of her then husband, and not subject to his debts and liabilities, with remainder over at her decease. In the event of their being no issue of the marriage, and the petitioner surviving, the whole was to be paid to her. She survived her husband, having issue of the marriage, and afterwards married Adam Browne, and they jointly charged her interest with three annuities. The Vice-Chancellor, having, on a petition for payment out of Court, under the 10 & 11 Vict. c. 96, (The Trustees' Relief Act,) of the income on the property, held, that the annuitants were entitled to be paid according to their priorities, this appeal was presented. *Cur. ad. vult.*

The Lord Chancellor said, that the cases of *Knight v. Knight*, 6 Sim. 121; *Benson v. Benson*, 6 Sim. 126, and *Bradley v. Hughes*, 8 Sim. 149, upon which the Vice-Chancellor had grounded his decision, were not applicable to the present case. The restraint of aliening by anticipation was not confined to the then existing coverture, but applied generally, and was therefore reimposed upon a second marriage. The dividends must therefore be paid to the petitioner and the decrees of the Court below reversed.

Vice-Chancellor of England.

Corporation of Liverpool v. Chippendale.
March 10, 1850.

THIRD ANSWER.—FURTHER TIME.—TAKING OFF THE FILE.—10TH ORDER OF APRIL, 1828.

Where, under a mistake, the Master had given further time upon the third answer being reported insufficient, a motion to take such answer off the file was granted under the 10th Order of April 3, 1828.

THIS was a motion that the defendant's answer might be taken off the file. It appeared

that the third answer had been reported insufficient, and that the Master, not knowing it was the third answer, had given the defendant a fortnight's time to put in a further answer.

Bethell and *Follett*, in support, referred to the 10th Order of April 3, 1828, which provides, that "upon a third answer being reported insufficient, the defendant shall be examined upon interrogatories to the points reported insufficient, and shall stand committed until such defendant shall have perfectly answered such interrogatories."

Stuart and *Lewin* contra.

The Vice-Chancellor said, that the Master had clearly given further time under a mistake and the motion must therefore be granted.

March 27.—*Shrewsbury and Birmingham and Shropshire Union Railway and Canal Companies v. London and North-Western Railway Company*—Motion refused with costs to suspend order for injunction until appeal heard.

—27.—*Turner v. Turner*—Injunction to restrain action of ejectment.

Vice-Chancellor Knight Bruce.

Sibbering v. E. Balcarras. Feb. 28, March 1, 1850.

SALE OF REVERSIONARY INTEREST.—BILL TO SET ASIDE.—LAPSE OF TIME.

A bill to set aside the sale of a reversionary interest was dismissed with costs, the sale having taken place in 1822, and the purchaser having died in 1825, and the tenant for life in 1830, and the bill only filed in 1847.

THIS was a bill to set aside a deed of sale, dated 28th June, 1822, whereby the plaintiff sold his reversionary interest in certain property at Blackrod, near Wigan, to the defendant's father, subject to the life interest of the plaintiff's father and to the incumbrances thereon, for 200*l*. In October, 1823, the plaintiff's father sold his life interest for 100*l*., the plaintiff joining in the conveyance, to the same purchaser. The defendant's father died in 1825, and the plaintiff's father in 1830, and in 1847 this bill was filed.

Lloyd and *W. H. Bennett* in support; *R. Palmer* and *J. V. Prior*, contra.

The Vice-Chancellor said, that even assuming the principles applicable to the sales of reversionary interests applied to the present case, the length of time that had elapsed since the death of the tenant for life, who had survived the purchaser, before filing this bill, was in favour of the transaction, and the bill must be dismissed with costs.

March 27.—*Dixon v. Gayfer*—Reference to the Master as to appointment of new receiver.

—27.—*Attorney-General v. Great Northern Railway Company*—Stand over to 1st Seal in Easter Term.

Vice-Chancellor Wigram.

Dison v. Pyner. March 8, 11, 1850.

SALE.—CONDUCT OF.—MASTER.—JURISDICTION.

Held, that the Masters have jurisdiction in their discretion to appoint the parties who shall conduct a sale under a decree.

THIS was a motion that the conduct of a sale of certain property in a suit to administer the trusts of a deed directing such sale, might be entrusted to the plaintiff in this cause, one of the *cestuis que trustent*. It appeared that the Master had, for the sake of convenience and to save expense, directed the sale to be conducted by the defendants, who were the trustees. The decrees had been obtained by the plaintiff, who had liberty to bid.

Lloyd and Shebbeare in support; the Solicitor-General, Wood, Elmsley, H. Clarke, and Hetherington, contra.

Cur. ad. vult.

The Vice-Chancellor said, that he had inquired of the Masters as to the practice, and it appeared that they had jurisdiction to exercise a discretion as to the party to conduct a sale directed by a decree, although it was obtained by the plaintiff, and as the discretion had been rightly exercised in the present case, the motion must be dismissed with costs.

March 27.—*Dobson v. Land*—Exceptions to Master's Report Allowed.

Court of Queen's Bench.

Houlden v. Smith. Jan. 18, 25, Feb. 26, 1850.

COUNTY COURT.—ACTION FOR TRESPASS AGAINST JUDGE.—JURISDICTION.

The plaintiff, resident in C., had, by leave of the judge of the County Court of L., been *amed* therein, but not having appeared, suffered judgment by default, and the execution not having been satisfied, a judgment summons was granted. The plaintiff not having appeared, was committed to the Cambridge common gaol for 14 days, but was discharged on *habeas corpus* by a judge at chambers: *Held, that as the County Court judge had illegally exceeded his jurisdiction, the plaintiff was entitled to recover in an action for trespass and false imprisonment.*

THE plaintiff, who resided in Cambridge, was sued by one Charles Young in the Lincolnshire County Court for Spilbury, upon leave of the defendant, who was the judge thereof, for the sum of 11*l.* 13*s.*, and the plaintiff not appearing to the summons, suffered judgment by default. Execution then issued, but not being satisfied, a judgment summons was taken out, calling on the plaintiff to appear and show what means he had of discharging the debt and costs, or in default of not appear-

ing, to be committed to the common gaol of Spilbury. The plaintiff did not appear, and he was committed under a warrant issued by the judge to Cambridge gaol for 14 days, but was afterwards discharged by Mr. Justice Patteson at chambers upon *habeas corpus*. The plaintiff thereupon brought this action for trespass and false imprisonment, to which the defendant pleaded "not guilty," and that he had no notice of action. At the trial before Mr. Baron Parke, at the Cambridge Assizes, a verdict was returned for the plaintiff, with 60*l.* damages, subject to the opinion of this Court upon a special case, whether the action was maintainable.

W. H. Watson and Naylor for the plaintiff; *Worlledge and O'Malley* for the defendant.

Cur. ad. vult.

The Court said, that under the 9 & 10 Vict. c. 95, s. 98, the plaintiff ought to have been summoned in the County Court for the Cambridge district, where he resided or carried on his business, and the defendant was not protected by the common law, or by any statute, for mistaking the law and acting without jurisdiction. The judgment would therefore be for the plaintiff.

Common Pleas.

Crowl v. Edge. Feb. 25, 1850.

PATENT.—SPECIFICATION.—ACTION ON THE CASE.

Where the enrolled specification of a patent was not identical with the invention for which the patent had been granted, but of a more extensive nature,—in an action on the case for infringing the plaintiff's patent in a particular not included in the patent but in the specification, a verdict for the defendant was held right, and the rule for a new trial discharged.

THIS was an action on the case for the infringement of a patent "for improvements in making gas and in the apparatus used in transmitting and measuring it," to which the defendant pleaded *inter alia*, that the specification had reference to another and different invention from that for which the plaintiff had obtained a patent, and also *non concessit*. A verdict having been found for the defendant, a rule nisi for a new trial had been obtained. It appeared from the specification, that the words "therein and" had been inserted, so that it referred to a patent for improvements in making gas and "in the apparatus used therein and in transmitting and measuring it," whereas the patent did not extend to the apparatus used in making gas, but only in measuring and transmitting it. The defendant also claimed a patent for improvements in the apparatus by which the gas was to be made.

Cur. ad. vult.

The Court said, that as the specification did not correctly state the invention for which the patent had been granted, the rule must be discharged.

Court of Exchequer.

Doe dem. Jones v. Jones. Feb. 14, 25, 1850.

GENERAL TURNPIKE ACT.—MORTGAGE OF TOLLS.—ENTERING IN TRUSTEE'S CLERK'S BOOK.

Held, that the entering within two calendar months in the trustees' clerk's book of a mortgage of tolls under the General Turnpike Act was antecedent to the making out a good title thereunder; and therefore, in an ejectment on two demises, where one mortgage had been only entered, but the other not till the expiration of two months, a verdict for the plaintiff was confirmed in the former, but directed to be entered for the defendant in the latter.

A RULE nisi had been granted on November 20 last, to enter the verdict for the defendant on one or both the demises in this action, which was brought in ejectment to recover possession of the toll-gates and houses in the Bala district of Merionethshire. Under the local Highway Acts, the company was divided into four districts, with separate clerks to each. It appeared that the trustees for the Barmouth district mortgaged the tolls, which extended over the whole county, to one Evans, who assigned to a Mr. Pugh, who on the 18th May, 1849, assigned to the lessor of the plaintiff; the assignments being drawn and attested by Mr. John Jones, the clerk of the district. Mr. Jones had also assigned, on the 11th May, his mortgage from the trustees as security for his bill to the lessor of the plaintiff. These assignments had been made in conformity with the 3 G. 4, c. 126, s. 81, which provides, that such assignment may be made in the form subjoined and endorsed on the mortgage, and shall be produced and notified to the clerk of the trustees within two calendar months after the date thereof, who shall enter the same in a book kept for that purpose, and that such assignees shall be then entitled to the full benefit of the mortgage. The transfer of the 11th May was duly entered by the clerk within two months after its execution, but that to Mr. Pugh was produced to, but was not entered by, the clerk until after that period. It appeared the only notification was such as might be implied from the clerk having prepared the assignments.

A verdict having passed for the plaintiff on both demises, this rule was obtained.

Townsend and Beavan showed cause against the rule, which was supported by *Welsby and Foulkes*.

The Court said, that the assignment of the 11th May had been duly notified to the proper clerk and an entry made by him, and therefore the rule would be discharged to enter the verdict for the defendant on that demise. In regard to the other demise, the Court, after taking time to consider, held, that, as the entry in the book was a condition precedent to the validity of a title under the assignment, the rule must be absolute to enter the verdict for the defendant.

Court of Exchequer Chamber.

Ashpittel v. Sercombe. June 16, 1849, Feb. 7, 1850.

RAILWAY.—ABORTIVE SCHEME.—ACTION FOR MONEY HAD AND RECEIVED.

Held, affirming the ruling of the L. C. Baron Pollock at Nisi Prius, that as the railway scheme of which the defendant below was a managing director, had proved abortive before action brought, the plaintiff below was entitled to recover the amount of his deposits, in an action for money had and received.

This action was brought by Mr. Sercombe, for money had and received, to recover back a sum of 262*l.* 10*s.*, deposits paid on 100 shares in the Metropolitan Junction Railway Company, of which the defendant below, Mr. Ashpittel, was a managing director. The company had been provisionally registered under the 7 & 8 Vict. c. 110, but the scheme had been abandoned, and a resolution of Sept. 22, 1845, entered in the minute book by the secretary, was admitted in evidence to show Ashpittel was present. Mr. Sercombe had not signed the subscription contract. Pollock, L. C. B., having directed the jury, that if they were of opinion the scheme was abandoned before action brought, they would find for the plaintiff, and a verdict having been found accordingly, a bill of exceptions to such ruling was tendered, as well as to the reception of the minute book in evidence.

Crowder and M. Smith for the plaintiff in error; *Butt and Greenwood* for the defendant in error, cited *Walstab v. Spottiswoode*, 15 M. & W. 501.

Cur. ad. vult.

The Court held that the ruling of the Lord Chief Baron was right, and overruled the exceptions, affirming the judgment.

Prerogative Court.

(Coram Sir Herbert Jenner Fust.)

Brenchley v. Hill and others. March 16, 1850.

WILL.—CODICIL.—ATTESTING WITNESSES.—PROBATE.

Probate was granted in favour of a codicil, although the attesting witnesses were uncertain as to whether what the testatrix wrote prior to their signing was her name or only a date—it appearing that she had duly executed numerous other testamentary papers, and the codicil had been prepared by a solicitor who had instructed the testatrix as to its execution.

ELIZABETH LYNN, formerly of Goldbeck, in Cumberland, having at various times executed 13 testamentary documents under the powers of her marriage settlement, in May, 1847, made a codicil, whereby she revoked all her former wills. It appeared from the evidence that the testatrix had properly executed the former wills, and that the solicitor who drew up the codicil specially cautioned the deceased as to the mode of execution in order to comply with the formalities of her marriage settlement. The attesting witnesses were un-

able to say whether the signature was affixed before or after their signing the paper, the one thought the testatrix signed last, but the other saw her write something, but could not positively say whether it was a date or the name. Under these circumstances, probate of the codicil was opposed on behalf of the executors of the deceased's husband and executors named in former instruments. Mrs. Breachley, the sister and next of kin (the deceased having by revoking all her former wills died intestate), propounded the codicil.

Addams and Twiss, Dns., in support; *The Queen's Advocate* and *Dr. Harding*, contra, for the executors and husband, referred to *In re Odling*, 2 Curt. 865; *In re Byrd*, 3 Curt. 117.

The Court said the presumption was in favour of the testatrix having signed the codicil before the attesting witnesses, as she had properly executed many previous instruments, and the present one was made under professional assistance. The intention of the testatrix to set aside her former wills had been stated to one of the witnesses who had received instructions to obtain a codicil for that purpose. The codicil could not be set aside upon the merely loose recollection of the witnesses under the existing circumstances as to the execution, and probate must pass in favour of the codicil.

Court of Bankruptcy.

(Coram Mr. Commissioner Goulburn.)

In re Stead. March 4, 1850.

BANKRUPT CONSOLIDATION ACT.—MUTI-

LATION OF BOOKS—UNVOUCHED EXPENDITURE.

The hearing of a bankrupt who came up to pass his last examination, was adjourned sine die, under the 12 & 13 Vict. c. 106, s. 252, where his cash-book was alleged to have been lost, and certain leaves produced which the bankrupt stated were all its contents, and there was a large sum received unvouched for—with leave to apply again.

THE bankrupt, John Stead, a grocer of Melcombe Regis, came up by adjournment for his last examination. The debts and liabilities amounted to 700*l.*, and the assets to about 250*l.*

Rees, for the assignees, opposed, on the ground, that the cash-book had at first been withheld, and subsequently several leaves had been taken out, which were alleged to be the entire contents, and that there were no entries in the other part of the book which was not produced, being, as alleged, lost.

Graham, official assignee, also opposed, and said, that there appeared a deficiency of nearly 300*l.* subsequently to the 4th Sept. 1849, and that the payments set off against it were unvouched.

Linklater, in support.

The Commissioner said, that in the absence of the cash-book the bankrupt could not be passed, and that under the 12 & 13 Vict. c. 106, s. 252, the examination must be adjourned sine die, with leave to apply when prepared with evidence as to the cash-book; and, upon the application of Mr. Linklater, granted protection for a month only.

ANALYTICAL DIGEST OF CASES.

REPORTED IN ALL THE COURTS.

Courts of Equity.

[For the previous sections of this series of the Digest, in the present volume, see

Jurisdiction of County Courts, p. 87.

Poor Law and Magistrates' Cases, 108.

Courts of Common Law:

Construction of Statutes, 128, 146.

Principles and Jurisdiction, 165.

Appeals from Revising Barristers, p. 199.

Courts of Equity:

Law of Attorneys and Solicitors, p. 229.

Law of Property and Conveyancing, p. 246.

Evidence, p. 299.

Law of Costs, pp. 330.

Pleading, p. 371.

Construction of Statutes, 369.

Principles of Equity, pp. 409, 429.]

PRACTICE.

AFFIDAVIT.

Master extra. in Ireland.—An affidavit was sworn before a Master extra. in Ireland, appointed under the 6 & 7 Vict. c. 82: *Held*, that it was not necessary to verify by

affidavit the fact that he filled that character. *Day v. Day*, 11 Beav. 35.

AMENDMENT.

Second order.—Irregularity.—A defendant put in an insufficient answer, and the plaintiff obtained an order of course to amend, and that the defendant might answer the amendments and exceptions together. No amendment was made within 14 days: *Held*, that a second order to amend could not be obtained, *ex parte*. *Dolly v. Challen*, 11 Beav. 61.

ANSWER.

1. *Submission to demurrable bill.*—A defendant submitting to answer cannot avail himself of the 38th Order of August, 1841, and decline to answer part of the bill, on the ground that the bill is wholly demurrable. *Fisher v. Price*, 11 Beav. 194.

2. *Insufficiency.*—If a bill is wholly demurrable, the defendant, if he answers it, must answer fully. *Mason v. Wakeman*, 15 Sim. 374, overruled by Lord Chancellor. *Gatland v. Tanner*, 15 Sim. 567.

APPEAL.

1. *Consent of parties.—Jurisdiction.*—

Semble, that parties cannot, by their consent or otherwise, on a rehearing or appeal, call upon the Court to decide on a matter which, in the usual course, ought to be referred to some other tribunal. *Stewart v. Forbes*, 1 M'N. & G. 137.

2. *Consent of parties.—Issue of fact.*—If a cause involves matter which can only be properly tried by a jury, and, on the hearing in the Court below, the judge, by the consent of the parties, decides the question at issue; *Held*, that this decision cannot be made the subject of appeal, unless the party dissatisfied can show that the cause is one fit for the decision of the Court without directing an issue. *Stewart v. Forbes*, 1 M'N. & G. 137.

Case cited in the judgment: *Morris v. Davies*, 5 C. & F. 163.

3. *Issue at law.*—Where, upon an appeal, it appears that the matter cannot be properly disposed of without sending a case for the opinion of a Court of Law, it is irregular to direct such case without first reversing the decree or order of the Court below. *Salkeid v. Johnston*, 1 M'N. & G. 242.

ATTACHMENT FOR COSTS.

Insolvency.—The plaintiff was taken under an attachment for costs under 20l. The party to whom the costs were payable, obtained a vesting order; but the plaintiff refused to file his schedule: *Held*, that he was not entitled to be discharged from the attachment. *Wenham v. Bowman*, 11 Beav. 138.

BREACH OF INJUNCTION.

By the terms of an injunction, A. B. was restrained, but it did not extend to "his servants and agents." A motion to commit C. D. for breach of the injunction, held irregular; but, *semble*, that he might be proceeded against for "a contempt," if he knowingly aided and assisted A. B. in breach of the injunction. *Lord Wellesley v. Earl of Mornington*, 11 Beav. 180.

CHARITY.

Attendance of corporation before Master.—*New trustees.*—On a petition seeking a reference for the appointment of new trustees in the room of deceased trustees of corporation charities, the Court declined giving any directions for any attendance on behalf of the corporation before the Master. *In re Shrewsbury Municipal Charities*, 1 H. & T. 204.

CONFIRMING REPORT.

The Master comprised two subjects in his report, one of which required confirmation by orders nisi and absolute, and the other by petition. A motion to confirm the report merely as to the accounts, &c., leaving the remainder to be confirmed by petition, was refused, the proper mode being to obtain a separate report. *Ramsdale v. Ramsdale*, 10 Beav. 668.

CONTEMPT.

1. *New attachment.*—A party in custody upon attachment for contempt of this Court, was erroneously discharged by the Court of Exche-

quer. The order was afterwards rescinded; but that Court *held*, that it had no jurisdiction to recommit. This Court directed new attachment to issue. *Wenham v. Bowman*, 11 Beav. 138.

2. *Pro confesso.*—*Proof of inability to execute attachment.*—To take a bill: *pro confesso* under the 77th Order of May, 1845, it must be shown by the evidence of the officer that he has used due diligence to execute the writ of contempt. *Yearsley v. Budgett*, 11 Beav. 144.

3. *Assisting in breach of injunction.*—An injunction was granted against A., restraining him (but not expressing his servants and agents) from cutting timber. B., who was A.'s agent, with knowledge of the injunction, cut the timber: *Held*, that B. might be committed for the contempt, though not for the breach of the injunction. *Lord Wellesley v. Earl of Mornington*, 11 Beav. 181.

4. *Discharge from attachment.*—Writs of attachment for want of answer, though regularly issued, discharged, and time given the defendants to answer on payment of costs, the defendants having reasonable grounds for thinking that an answer would not be required without previous intimation. *Siderfeld v. Thatcher*, 11 Beav. 201.

DEFENDANT.

If a defendant, who has been examined by the plaintiff as a witness in the cause, submits to a decree against himself, notwithstanding such examination, the fact of that examination having been had cannot be sustained by the other defendants who have not been examined, as an objection to a decree against them. *Smith v. Smith*, 6 Hare, 534.

DEMURRER.

Uncertainty.—A testator devised his estate on trust for his children. Some of them filed a bill for the administration of the estate against the trustees and against one J. G. The bill charged that J. G. alleged, that the plaintiffs had contracted to sell him the testator's real estate, and that he had given notice to the trustees of his claim; but the plaintiffs charged that they had not entered into any agreement to sell to J. G., and that if they had, it had been long since abandoned and waived by J. G.; and it further charged, that J. G. had not any charge, interest, or claim on the estate: *Held*, that the allegations against J. G. were insufficient, and his demurrer was allowed. *Hodgson v. Espinasse*, 10 Beav. 473.

DISMISSAL.

1. *Pending reference as to title.*—A reference as to title was made before hearing. A motion to dismiss for want of prosecution, pending the reference, was refused. *Gregory v. Spencer*, 11 Beav. 143.

2. *Want of prosecution.*—A motion to dismiss for want of prosecution, made after the bankruptcy of the plaintiff, refused with costs, the proper form of motion being, that the assignees do file a supplemental bill within a given time, and, in default, that the bill stand dismissed. *Robinson v. Norton*, 10 Beav. 484.

DISSOLVING INJUNCTION.

Order nisi.—The established practice, which requires the common injunction to be dissolved by the usual order nisi and order absolute, is not affected by the fact that the time allowed by the rules of Court for taking exceptions to the answer has elapsed.

The case of *Bishton v. Birch*, 2 V. & B. 40, considered and explained. *Raiscock v. Young*, 1 H. & T. 197; 1 M'N. & G. 196.

EXAMINATION.

Affidavit in lieu of.—*Master's office.*—A party, by consenting to allow an accounting party to put in an affidavit instead of an examination, is not precluded from afterwards insisting on having an examination, if the discovery given by the affidavit be unsatisfactory. *Attorney-General v. Corporation of Chester*, 11 Beav. 169.

HUSBAND AND WIFE.

A husband having obtained leave to answer separately from his wife, an order was afterwards made, on the application of the plaintiff, that the wife should answer separately from her husband. *Bray v. Akers*, 15 Sim. 610.

IMPERTINENCE.

After a plaintiff has set down a cause to be heard on an objection for want of parties raised by the answer, he cannot refer the answer for impertinence. *Lowell v. Andrew*, 15 Sim. 586.

INFANT.

Reference as to two suits.—Where two suits are instituted on behalf of an infant, it is not of course, when one of such suits is in the paper for hearing, to refer it to the Master to ascertain which of the suits is most beneficial for the infant. *Rundle v. Rundle*, 11 Beav. 33.

INJUNCTION.

1. An injunction was obtained before answer. The defendant filed his answer, but delayed moving to dissolve until several months after replication, and at a period when the evidence would have been published but for the defendant having obtained an enlargement of the publication. The motion was, on that ground, refused. *Feistel v. King's College, Cambridge*, 10 Beav. 491.

2. The provisional directors of a joint-stock company having, without the authority of the plaintiff, published a prospectus, stating him to be a trustee of the company, were restrained by injunction. *Routh v. Webster*, 10 Beav. 561.

3. **Quack medicine.**—**Public fraud.**—Injunction to prevent a chemist from selling a quack medicine, under a false and colourable representation that it was a medicine of the plaintiff, an eminent physician, refused. *Clark v. Freeman*, 11 Beav. 112.

4. **Publication of a libel.**—The Court will not interfere by injunction to prevent the publication of a libel. *Clark v. Freeman*, 11 Beav. 112.

5. **Receiver.**—The pendency of a suit in the Ecclesiastical Court, to have a probate or letters of administration recalled, is not of itself a suf-

ficient ground to induce the Court to grant an injunction and receiver against the personal representative. *Connor v. Connor*, 15 Sim. 598.

6. **Second application on the merits.**—Where an *ex parte* injunction has been dissolved on the ground of misrepresentation or concealment, the plaintiff is not thereby precluded from applying again for an injunction on the merits. *Fitch v. Rochfort*, 1 H. & T. 255.

ISSUE.

Principles and practice in a case where the plaintiff's relief in equity is dependent upon his previously establishing his legal right. *Smith v. Earl of Effingham*, 10 Beav. 589.

JUDGE.

Interest in suit.—Where the Lord Chancellor had given a decision in a suit between an individual and a company in which the Lord Chancellor was a shareholder, his lordship refused to hear an application to discharge the order upon that ground, but the cause was allowed to be re-heard before the Master of the Rolls. *Grand Junction Railway Company v. Dimes*, 1 H. & T. 254.

JURISDICTION.

Where a decree has been affirmed by the Lord Chancellor, no application can be made, except before the Lord Chancellor, for a rehearing for the purpose of obtaining directions different from those already given. *Smith v. Earl of Effingham*, 10 Beav. 589.

LUNACY.

1. **Petition.**—Where two petitions in the same matter (for the carriage of a commission of lunacy) are answered on the same day, that which is first presented is entitled to precedence. *In re Brookman*, 1 M'N. & G. 199.

2. **Committee expending moneys on estate without Lord Chancellor's sanction.**—If a committee expend the lunatic's property without the sanction of the Lord Chancellor, the Court will direct a reference to the Master to inquire whether the expenditure has been beneficial or not, and even if it turns out to have been beneficial, will make the committee bear the costs of the inquiry; but the Court refused to act on this rule where the expenditure had been incurred with the sanction of the Master, although such sanction was irregular. *In re Brown*, 1 M'N. & G. 201.

3. **Committee expending moneys on estate.**—**Sanction of Master.**—Where committees of a lunatic's estate had expended large sums in draining and other improvements, and had contracted with a railway company for sale of a part of the estate, and done other acts which were not within the scope of their authority, but had, as to all of them, acted under the sanction of the Master in Lunacy: Held, on a petition by the heir-at-law of the lunatic, that, although the proceedings were irregular, they formed no ground for dismissing the committees from their office. *In re Brown*, 1 M'N. & G. 201.

4. **Powers and duties of Committees.**—**Orders in Lunacy.**—**Construction.**—Committees have

no authority of themselves to cut timber or to expend sums in draining and other improvements, or to consent to an act of parliament for making a railway.

The 13th order in lunacy of the 27th October, 1848; does not authorize the Master to take upon himself the direction of the lunatic's estate in the matters last mentioned, but was intended solely to enable him to conduct inquiries respecting the person and property of the lunatic without any previous order for that purpose. *In re Brown*, 1 M'N. & G. 201.

5. *Committee employing agent*.—It is competent for committees to employ an agent to superintend the details of the management of the estate of the lunatic. *In re Brown*, 1 M'N. & G. 201.

6. *Committee residing at distance from estate*.—The circumstance that a committee of a lunatic's estate resides at a distance from the property is not a ground *per se* for discharging such committee, although it may raise a case for inquiry before the Master as to the propriety of his being discharged. *In re Brown*, 1 M'N. & G. 201.

7. *Fund in Court*.—*Stop order*.—An order, in the nature of a stop order, to prevent the transfer, without notice, of funds in Court belonging to a lunatic, granted on the application of the mortgagees of the lunatic's next of kin. *Esparle Kent*, in *re Moore*, 1 H. & T. 214.

Case cited: *In re Alchin*, Secretary of Lunatics' Minute Book for 1825, No. 13.

8. *Carriage of Commission*.—Where a lunatic, entitled for life to a considerable income, had been confined several years in an asylum, among the lowest class of patients, at a small annual expense, and without any particular attendance or comforts, and the accumulations from his income had been divided among his brothers and sisters, an order for the issuing of a commission was made, on the petition of a stranger, and the carriage of it was given to him; and a cross-petition of two brothers of the lunatic was dismissed. *In re Austie*, 1 H. & T. 313; 1 M'N. & G. 200.

MASTER'S REPORT.

Concurrent references.—A party obtaining a Master's report adverse to himself will be compelled to file it. *In re London Dock Company*, 11 Beav. 78.

ORDER.

1. *Absolute*.—In a creditors' suit, an application to confirm absolute the Master's report of best purchaser, made by consent before the expiration of the time limited by the order *nisi*, refused. *Vernon v. Thellusson*, 10 Beav. 452.

2. *Suppression of material facts*.—An order, obtained *ex parte* upon motion, discharged, on account of the suppression of material facts. *De Feucheres v. Davess*, 11 Beav. 46.

3. Upon the motion of B., the Court ordered that, upon his paying the purchase-money into Court, he should be substituted as purchaser in the place of A., and that A. thereupon should be discharged from his purchase. B.

having omitted to draw up the order, the plaintiffs in the cause did so, and caused a direction to be inserted for the payment of the purchase-money within 12 days after service of the order, in which form (after notice to B. to attend at the Registrar's Office) the order was passed.

On the motion of B., the Court discharged the order with costs. *Miller v. Smith*, 6 Hare, 609.

4. An order made by the Court, and correctly drawn up, will not in all cases be discharged, solely on the ground that it was passed by the registrar, without notice to the other parties in the cause. *Hart v. Tulk*, 6 Hare, 611.

5. An order made upon notice for leave to the plaintiffs to amend their bill, giving security to the Clerk of Records and Writs for the costs of the defendants of the suit, already incurred, was varied *ex parte*, by directing the costs of the defendants to be taxed and paid to them by the plaintiffs, reserving the question how they were ultimately to be borne; the variation not being such as could prejudice the absent defendants. *Hart v. Tulk*, 6 Hare, 611.

6. *Further answer upon original exceptions*.—Form of order, where, after exceptions to the original bill had been allowed, the defendant had put in a further answer to the original bill, and an answer to the amended bill together, and the plaintiff wished to refer the further answer upon the original exceptions. *Watson v. Life*, 1 H. & T. 308.

7. *Objection for want of parties*.—At the hearing of an objection, taken by an answer, for want of parties, the defendant is not at liberty to contend that there is any defect of parties in addition to that stated in the answer. *Lovell v. Andrew*, 15 Sim. 581.

PAYMENT INTO COURT.

Tenant for life.—*Executor*.—On a motion to pay assets of a testator into Court, the Court declined to direct the payment of the income to the tenant for life, to be continued, unless the executor took upon himself the responsibility of the payment. *Abby v. Gifford*, 11 Beav. 28.

PAYMENT OUT OF COURT.

Feme covert.—*Consent*.—On the marriage of an infant feme, a settlement was made of funds in Court, to which she was entitled. On her attaining 21, a petition was presented for payment to the trustees: *Held*, that the consent of the lady in Court or by commission was necessary. *Day v. Day*, 11 Beav. 35.

PETITION.

1. The Master was directed to charge the defendants with the rents of some charity property "from the filing of the information come to the hands of the defendants." The Master charged them with rents accrued before, but paid after, that period, and his report had been confirmed. The defendants presented a petition to be relieved from payment; but the Court *held*, that there was no plain mistake in the mode of taking the accounts, and declined

to interfere, except upon a rehearing. *Attorney-General v. Drapers' Company*, 10 Beav. 558.

2. *Summary proceeding.—Form of reference.*

—*Production before the Master.*—Where under private acts, &c., the Court has jurisdiction to proceed in a summary way by petition, it is not usual, on directing a reference to ascertain the parties entitled, to direct the production of deeds and documents, and to examine the parties.

On such reference having been made, the Court refused, with costs, an application of a second claimant, for a 2nd order containing special directions. *In re London Dock Company*, 11 Beav. 78.

PRO CONFESSO.

Dispensing with service.—Motion to dispense with service, on a defendant who had never appeared, of a copy of a decree taken *pro confesso*, and of all other proceedings in the suit, refused. *Vaughan v. Rogers*, 11 Beav. 165.

PRODUCTION.

1. *Payment into Court.—Admission of title.*—Motion to produce documents and to pay money into Court, refused, on the ground that the plaintiff's title was not sufficiently admitted by the answer. On such a motion, the Court does not require the plaintiff to produce any absolute admission of title, but merely such a probability of title as it can safely act on. *M'Hardy v. Hitchcock*, 11 Beav. 73.

2. *Impeached deed.*—Production refused of a deed, which the plaintiff, by his bill, sought to set aside. *Dendy v. Cross*, 11 Beav. 91.

3. *Documents.—Answer as to belief only.*—The defendant, in answer to a bill seeking discovery in aid of the plaintiff's defence to an action at law, brought by the defendant against him, stated that the letters, papers, and writings, scheduled to his answer, contained the evidence on which the defendant was advised and intended to rely at the time of the action, and that the same did not, nor did any of them, "as the defendant was advised and verily believed," contain any evidence whatever in support of the plaintiff's pleas in the action; and that the same were not in any manner material to the plaintiff's case: *Held*, that the statement was a sufficient answer to the plaintiff's motion for production and inspection of the scheduled documents. *Peile v. Stoddart*, 1 H. & T. 207; 1 M'N. & G. 192.

RECEIVER.

1. The existence of a suit to recall probate, in which the probate has been ordered into Court, is not, of itself, a sufficient ground for appointing a receiver. *Newton v. Risketts*, 10 Beav. 525.

2. *After decree.*—A receiver appointed after decree upon motion, in an urgent case. *Thomas v. Davies*, 11 Beav. 29.

3. *Sureties.*—Where a reference has been made to appoint a receiver, the Court will not, by consent even of the parties, dispense with the usual security. The proper course is, for the parties, of their own authority, to nominate a receiver, and then to apply for liberty for

him to act without security. *Manners v. Furze*, 11 Beav. 30.

Case cited in the judgment: *Ridout v. Earl of Plymouth*, 1 Dick. 68.

4. *Jurisdiction.*—The Court will not allow a receiver's recognizance to be put in suit, on a report showing merely that *something* is due from the receiver. The *precise amount* of what is due must be stated.

The Court has no jurisdiction to order the personal representative of a receiver to account for the receiver's receipts, without a bill being filed. *Ludgater v. Channell*, 15 Sim. 479.

5. Where there were two suits for administration, and a motion for a receiver in each suit came on upon the same day, the receiver was appointed in both suits, and the Court gave the carriage of the order to the plaintiffs, by whom the first notice of motion for the receiver had been given. *Hart v. Tulk*, 6 Hare, 614.

6. Special leave given to the plaintiffs to move for liberty to amend their bill, by striking out the name of one of such plaintiffs and making him a defendant: *Held*, to authorize a motion by such of the parties as were to remain, excluding the plaintiff whose name was to be struck out; and the Court made the order, without prejudice to a motion then pending, for a receiver in the original cause. *Hart v. Tulk*, 6 Hare, 612.

Cases cited: *Brown v. Sawyer*, 3 Beav. 598; *Wilson v. Wilson*, 1 J. & W. 457; *Witts v. Campbell*, 12 Ves. 492.

7. Upon the bill of an equitable mortgagee, leave was given to serve the defendant, the mortgagor, before appearance, with notice of motion for a receiver, (the bill not asking for an injunction); and the order was made, upon affidavit of service, for the appointment of the receiver, with liberty to the parties to propose themselves, according to the notice. *Meaden v. Sealey*, 6 Hare, 620.

Case cited in the judgment:—*Tanfield v. Irvine*, 2 Russ. 149.

REPLICATION.

Replication ordered to be taken off the file, because notice of the filing of it was not given on the day on which it was filed. *Johnson v. Tucker*, 15 Sim. 599.

RETAINING BILL.

Liberty to proceed at law, and restraining the setting up of outstanding terms.—Petition.—Staying proceedings pending appeal.—A judgment creditor, who had sued out an elegit, filed his bill to establish his priority over subsequent incumbrances on the estate of his debtor. By the decree, the bill was retained for 12 months, with liberty to the plaintiff to proceed at law, and the defendants were restrained from setting up outstanding terms and the Statute of Limitations; further directions were reserved. The plaintiff brought an ejectment, which was defended by one only of the defendants, and also by the occupying tenants.

The latter set up the Statute of Limitations, and obtained judgment. On the cause coming on for further directions, the plaintiff presented a petition, stating the failure of his proceedings at law, and asking liberty to bring a new action, and that the defendants might be ordered to defend the same, with proper directions, or for an issue, or for a stay of proceedings to enable the plaintiff to appeal to the House of Lords against the original decree. The Court refused to grant the prayer of the petition, and held, that such relief was inconsistent with the practice; that the verdict against one defendant could not, under such circumstances, be considered as a verdict against all, and that no application for a stay of proceedings could be entertained until the plaintiff had appealed. *Smith v. Earl of Effingham*, 11 Beav. 82.

REVIVOR.

Dismissal for want of prosecution of an issue directed.—A bill was filed by a lunatic and his committee, and an injunction granted, and a decree made directing an issue. The lunatic died, and no further proceedings had been taken by the committee. The Court ordered, that the injunction should be dissolved and all proceedings stayed, unless the suit should be revived within a limited time. *Price v. Berriington*, 11 Beav. 90.

SERVICE.

Leave to serve notice of motion upon defendants before their appearance in the cause, does not include also leave to give short notice of the motion; and if other than the regular period of notice be given, leave for that purpose must be obtained, and will not be implied from the distance of the place of service. *Hart v. Tulk*, 6 Hare, 611.

SERVICE OF COPY BILL.

All the trustees named in a will having died, a bill was filed by one of the *cestui qui trustent* against the others, the heir of the trustee who died last, and certain persons who had been in possession of the estates, praying for an account of the rents received by those persons, for the appointment of new trustees, and that the estates might be conveyed to them by the heir of the trustee who died last.

Held, that the *cestui que trustent* who were defendants, had been rightly served with a copy of the bill under the 23rd General Order of August, 1841. *Johnson v. Tucker*, 15 Sim. 485.

SERVING PARTIES.

Contingent account.—Legacy carried over to a separate contingent account, in order to avoid the expense of serving all the parties interested. *Cazalet v. Smith*, 11 Beav. 177.

SERVICE OF SUBPENA.

Jurisdiction.—A bill was filed by the plaintiff, on behalf of the shareholders, against an Irish Railway Company and its 15 directors, 14 of whom were resident in Ireland. An ap-

plication to discharge an order giving leave to serve the company with a subpoena on Ireland was refused; all the parties except the company having already appeared. *Lewis v. Biddison*, 11 Beav. 153.

SUBSTITUTED SERVICE.

1. **Solicitor.**—**Contempt.**—The order on a solicitor for payment to his client of a sum found due by taxation, requires personal service; but it appearing that the solicitor absented himself to avoid service, an order for substituted service was made. *Mc Le Lloyd*, 10 Beav. 451.

2. **Avoiding service.**—A party having gone abroad to avoid service of an order for payment into Court, &c., substituted service was ordered at the last place of residence and on her solicitor. *Barlton v. Carpenter*, 11 Beav. 33.

Case cited: *Farrow v. White*, 1 Jac. & W. 643.

3. In 1841, a defendant appeared by his six clerk, and described himself as resident in C. After the abolition of the office of six clerk, he stated no address for service, as required by the 20th General Order of Oct. 1842; and went to America. An application that service of all proceedings at C. should be deemed good service, was refused. *Hughes v. Wheeler*, 11 Beav. 178.

4. Service of the subpoena to appear and answer a bill of revivor and supplement, upon defendants residing out of the jurisdiction (in Italy), ordered to be substituted by service upon the solicitors appearing for such defendants in the original suit. *Hart v. Tulk*, 6 Hare, 618.

Case cited: *Norton v. Hepworth*, 1 Hall & T. 158; 1 M'N. & G. 54.

TAXATION.

1. **Insolvent.**—**Irregularity.**—Order for taxation, obtained by an insolvent debtor, of a bill of costs incurred prior to his insolvency, discharged with costs. *In re Halsall*, 11 Beav. 163.

2. **Party and Party.**—**Two counsel generally only allowed.**—The general rule, that, for the purposes of taxation between party and party, only two counsel can be allowed as against an adverse party, will not be departed from, except under very special circumstances. *Attorney-General v. Muaro*, 1 M'N. & G. 213.

TIME TO ANSWER.

Affidavit in support.—The first application for time to answer is not of course, but must (unless the facts be admitted by the plaintiff) be supported by affidavit showing sufficient cause and due diligence. *Brown v. Lee*, 11 Beav. 162.

TRAVERSING NOTE.

Substituted service.—Where a bill of revivor and supplement was filed by one of two plaintiffs, and the other plaintiff, refusing to join, was made a defendant, and an appearance entered for him under the xxxixth General Order of May, 1845, and such defendant afterwards obtained and served an order, changing his

solicitors in the cause,—the Court, upon an application by the plaintiff, supported by affidavit that diligent inquiries had been made for such defendant, but he could not be found, ordered that service upon the new solicitor named in the order for changing solicitors, of

a copy of the traversing note should be deemed good service upon such defendant. *Wallis v. Darby*, 6 Hare, 618.

Cases cited in the judgment: *Norton v. Hepworth*, 1 M'N. & G. 54; 1 H. & T. 158; *Murray v. Vipart*, 1 Phill. 521.

BUSINESS OF THE COURTS.

COMMON LAW SITTINGS.

Exchequer at Westminster.

SPECIAL CASES.

For Easter Term, 1850.

For Judgment.

Mortimer v. Hartley.

For Argument.

Doe dem. Dean and Chapter of Exeter v. Phelps. Shield v. Wilkins. Denistoun and others v. Young and others. Hersman and others v. Coryton, Esq. Grover and others v. Birmingham. Vincent v. Bishop of Sodor and Man. Doe dem. Patrick and others v. Duke of Beaufort. Jacques and another, assignees, v. Fawntleroy. Wilson v. Eden.

DEMURRERS.

For Easter Term, 1850.

For Judgment.

Hutchinson, admix., &c., v. The York, Newcastle, and Berwick Railway Company.

For Argument.

Gould v. Staffordshire Potteries Water Works Company.

PEREMPTORY PAPER.

For Easter Term, 1850.

To be called on the 1st day of the Term after the Motions, and to be proceeded with the next day if necessary, before the Motions.

Hardy assignee, &c., v. Tingey.

Doe d. Williams v. Howell and another.

In the matter of G. T. Steadman, Gent.

Price, administratrix, v. Cameron's Coalbrook

Steam Coal and Swansea and Loughor Railway Company.

NEW TRIAL PAPER.

For Easter Term, 1850.

FOR JUDGMENT.

London.—*Sleigh v. Sleigh*—Crowder.

York.—*Kaye v. Brett and another*—Watson.

York.—*Wiles v. Woodward*—Watson.

Bristol.—*Lush v. Russell*—Peacock.

FOR ARGUMENT.

Middlesex.—*Storror v. Harman*—Lush.

Huntingdon.—*Dall v. Moller and another*—Chambers.

Liverpool.—*Bell, P. O. v. Earl Talbot*—Martin.

Liverpool.—*Sellers v. Dickinson*—Watson.

Middlesex.—*Chilcote v. Wadsworth*—Martin.

Middlesex.—*Towne v. Phillips and another*—Watson.

Middlesex.—*Simpkins v. Apothecary*—Barstow.

Middlesex.—*Pudney v. The Eastern Counties Railway Company and another*—James.

Middlesex.—*Doe d. Nixon and another v. Preston*—Martin.

Middlesex.—*Greenland v. Chaplin*—Serjt. Shee.

London.—*Lafone and another v. Ellis*—Attorney-General.

London.—*Bosanquet, P. O., v. Shortridge*—Sir F. Theigier.

London.—*Grueber and another v. Daniel*—Sir F. Theigier.

London.—*Sampson and others v. Young and others*—Cockburn.

London.—*Hunter v. Spence*—Martin.

London.—*Same v. Same*—Watson.

London.—*Davis v. Hewlitt*—Skinner.

Middlesex.—*Boro, Manr., &c., v. Mitchell*—Martin.

Middlesex.—*Mosley v. Houghton*—Humphrey.

Middlesex.—*Wilson v. Ashley*—Atherton.

London.—*Cranston v. Marshall and another*—Martin.

NISI PRIUS CAUSE LISTS.

Court at Exchequer.

Middlesex.

Loveland and B. James and Son v. Stephens

Hefring

Owlett

Middlesex Great Western Railway Company

Same

Same

Same

Same

Same

Same

Same

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Same

Same

S. J. Kiemen

S. J. Mayor, &c., of Rochester

R. Sheppard

S. J. J. Shepherd

S. J. Lewis

S. J. Clapham

S. J. Gurney

S. J. Dowding

S. J. Norris

S. J. Clement

S. J. Barnes

Pro. G. H. Taylor

Repln. Wright and K.

Dt. Johnson and Co.

Dt. Same

Dt. Same

Dt. Same

Dt. Same

Dt. Johnston

Dt. Johnston and Co.

Dt. Same

Dt. Same

Dt. Same

Dt. Same

Dt. Same

Dt. Same

Dt. Same

Dt. Same

C. S. Hill	Bouguereau	S. J. Brett	Pro. Edwards and R.
Wright, S. and S.	Uoelram	S. J. Lewis	Dt. Gregory, F. and Co.
Westmacott and P.	Christie and others, assignees, &c.	S. J. J. Mansey	Pro. Stanley
A. R. Steele	Pennell and others, assignees, &c.	S. J. Andaman	Dt. Loffy and Co.
Trail	Luerson	S. J. Buak	Ca. H. H. Duncombe
H. Harris	Hart	S. J. Baxendale	Ca. Tatham and Co.
C. Lewis	Giles	S. J. Pritchett	Ca. Humphreys
W. Moss	Lindsay and anr.	S. J. Smith	Ca. A. R. Steele
In person	Osborne	S. J. Ridout	Ca. James Taylor
W. & G. T. Woodroffe	Bullock and another	Cooper	Dt. W. B. James
S. G. Hornidge	Hancock	S. J. Bewley	Pro. Bevan and G.
Fearnley	Knight	S. J. Fox and another	Ca. Brace
De Medina	Neale	S. J. Le Paige	Pro. Catten
Dodd and Co.	Sims and others	S. J. Brutton and another	Pro. Hornley
Currie and Co.	Glanie	S. J. Baron de Delmar	Pro. Wilde, Rees, & Co.
De Medina	Skinner	S. J. London, Brighton, and South Coast Rail.	Ca. Sutton and Co.
B. Austen	Woodhouse	S. J. Mostyn	Pro. Williams and Co.
Tatham and P.	McGregor	S. J. Hughes	Dt. Williams and Co.
Birham and Co.	King and another, executors	S. J. Bruin	Pro. Barrett and E.
A. Mayhew	Barker and anr.	S. J. Broaches	Dt. Bolding and P.
Mackrell	Elmas	S. J. Ogle	Pro. Ogle
G. H. Lewin	Dubourg	S. J. Lord Ingestre	Pro. Younghusband
H. G. Robinson	Webster	S. J. Planche	Pro. Gray
Same	Barnley	S. J. Verge	Dt. Dickson and O.
A. Mayhew	Holmes	S. J. Grundy	Pro. Hodgson
Tanner and E.	Birkenshead, Lancashire, & Cheshire Junc. Rail.	S. J. Frankland	Dt. J. H. and R. Tys
Johnson, Son, and W.	Midland Great Western Rail. of Ireland	S. J. Blythe	Dt. Johnson, F. and L.
Same	Same	S. J. H. Moore	Dt. Same
Same	Same	S. J. C. Moore	Dt. Same
Pittendreich and S.	Staunton	S. J. H. E. Voules	Dt. T. Clark
Same	Same	S. J. W. J. Voules	Pro. Same
J. Taylor	Doe d. Meryweather & ux.	S. J. Turner and others	Ejt. Hine and Robinson
May and Sweetland	Bousfield	S. J. Breten	Pro. Cotterill
E. Lewis	Adoia	S. J. Maorogardato	Ca. E. J. Sydney
J. Williams	Williams	S. J. Lowe	Pro. Crowder and M.
Hams and B.	Brown	S. J. Wigram and another	Ca. G. H. Taylor
T. M. Wilkin	Dawson	Gwynn	Cort. Cheston
Bowden and S.	Potter and others	Clarke	Dt. G. Clark
J. W. Christmas	Pellett	Dark	Cort. Child and K.
Pocock and P.	Abbiss	King	Dt. R. C. Dewey
S. Abrahams	Raby	Austin	Dt. Clarke
H. Harris	How	Higginson	Dt. Cooke
Wellborne	Johnson	Benjamin	Feigned Iss. I. A. Jones
Smith and Johnson	Wilden	Scales	Dt. Stevens and S.
Pocock and P.	Glenn	East & West India Docks and Birmingham Junction Railway	Pro. Tyrrell and P.
W. Stephens	Midland Great Western Railw. Co. of Ireland	Baston	Dt. Tritton
A. B. Carpenter	Gourley	Willington	Dt. J. E. Beales
White, E. and W.	Olliver	S. J. Larnmouth, executor, &c.	Dt. Wright and Co.
H. G. Robinson	Doe d. Handy	Wheeler	Tress. & Ejcet. Bradley
Hanslip and M.	Allen	Ogden	Pro. James Goren
Gregory, F., and Co.	Solomon	S. J. Hewell	Pro. Elmslie and P.
C. O. Hoare	Mahany	Richards and others	Tress. Embury
Chautler and W.	Homer	S. J. Hutchison	Dt. J. and W. Galsworthy
G. White	Pledge	Fudbury, sen.	Dt. Silvester
S. Smith	Williams	Aldred, sued, &c.	Pro. George
Same	Robinson	Rook	Dt. I. A. Jones
Hopwood and Son	Addington	Archbold	Pro. Branscombe
J. B. Towse	Downey	Allen	Dt. A. Mayhew
C. A. Woolley	Maynard	Norcutt	Pro. E. M. Elderton
Ivimey	Rea and another	Beckett	Dt. Kirk
Willoughby and C.	Hook	Stearns	Pro. G. I. Shaw
J. S. Wright	Rosam (pauper)	Burt and others	Ca. Collier and Co.
Hare	Lindus	Prior	Pro. Sidney
J. D. Pinero	Evans	Eldred	Ca. Wheelock
Lewis and Nash	Warrington, Esq.	Melladew	Pro. Fry

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DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, APRIL 13, 1850.  
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PROSPECTS AND DUTIES OF THE PROFESSION.

PROPOSED REDUCTION OF JUDICIAL SALARIES.

THE re-assembling of parliament after the Easter Recess nearly simultaneously with the sitting of the Superior Courts at the commencement of Easter Term, affords an appropriate opportunity for a consideration of the state and prospects of the profession, and a glance at the changes proposed or threatened.

It would be in vain to deny that the prejudices fostered by ignorance and misrepresentation—to which the legal profession are peculiarly subject—and the want of union and organization amongst its members, are now producing their natural results. One branch of the profession is first attacked, and then another, whilst the power of resistance is diminished in proportion to the success of each preceding assault.

If it were desired to render the administration of the law feeble and ineffective, perhaps no better means could be adopted than to deprive those engaged in it of adequate incomes, in a country where respect and consideration are uniformly associated with, if not dependent upon, a certain appearance of opulence and capacity to expend money. Those invested with authority, however, find it at once easy and popular to interfere with the emoluments of the legal profession. A Select Committee of the House of Commons, at the instance of the noble lord at the head of her Majesty's government, is about to consider what reduction can be made in the salaries of those holding the highest judicial offices in the Courts of law and equity. The measure, it is announced, is to be prospective, so that it is aimed at and affects the profession and

not the present judges. As the government think the cutting down of judicial salaries practicable and expedient, and those actually holding office have no personal ground for complaint, the arrangement may be considered as accomplished.

The only question remaining is, to what extent it will be deemed expedient to reduce the incomes of those appointed to the discharge of judicial functions? We dare say it will be suggested, that as the County Court judges dispose of a far greater number of causes than the judges of any of the Superior Courts, and are paid only one thousand a year, and when a vacancy occurs there is no lack of candidates—qualified according to law for the office—the sum paid to the judges of the County Courts should be the maximum amount of salary payable to any judicial officer. If the matter were thus settled, no doubt there would be a host of barristers of seven years' standing, ready and willing to succeed, not only to the Chief Justices of the Queen's Bench and the Common Pleas, but to mount the Woolstack itself upon the terms proposed.

The fitness and capability of those likely to succeed to the Wildes, the Campbells, and the Cottenhams, under such circumstances, is altogether a different question, but it is a consideration in which the public is far more interested than the existing or future aspirants to forensic honours. If the salaries of the judges should be considerably reduced, a seat on the Bench will cease to be an object of ambition to the most eminent lawyers at the Bar, as its acceptance must be accompanied by a diminished income. Whenever the men who preside are constantly inferior in intellect and professional acquirement to those who practise before them, the habitual deference with which the Bench is regarded, if maintained at all, can only be simulated, it will no

longer be accompanied by respect, and justice herself will be placed in jeopardy.

We are not ignorant that some part—we hope and believe only a small part—of the profession look with composure, not to say with satisfaction, upon any arrangement, the injurious operation of which affects only the leading members of the Bar. It is thought that the selfish indifference many, uniting professional eminence with some degree of political influence, have from time to time displayed, in regard to measures injurious to the junior Bar, as well as to the most numerous class of the profession, disentitle them to general sympathy and support. Others conceive that the leading members of the Bar are powerful enough to take care of themselves. In such sentiments, it is scarcely necessary to state, we disavow all participation. We have ever held that the interests of all classes of the profession are indissolubly bound up together, and that every class—not excluding the humblest—has a right to expect the countenance, consideration and protective support of the others.

The maintenance and application of this salutary principle was never more requisite than at the present juncture. Sweeping changes, extending to every portion of our system of judicature, are contemplated, and measures for effecting them actually in progress, or about to be introduced, by persons in authority. The whole system of procedure in the Courts of Equity, and the system of practice and pleading in the Superior Courts of Law, are about to undergo examination, with a view to extensive modification and revision. Questions relating to the Stamp Duties, Fees of Court, Short Forms of Conveyance, the Attorneys' Certificate Tax, the Extension of County Courts' Jurisdiction, and other measures in which the members of the legal profession are vitally interested, are now actually depending.

Active and cordial concert and co-operation are duties the occasion imposes upon all who desire to sustain the character and importance of the profession. In discussing and examining plans of legal reform or retrenchment—by whomsoever propounded—the primary consideration should be, the probable effect of the proposed alteration as regards the general public. The interests of a class should never be put in competition with those of the community. The legal profession repudiate the desire of seeking for or retaining any advantages of a peculiar or exclusive character. Its most influential members are ready not only to

sanction, but to assist with their knowledge and experience in giving effect to any scheme for rendering the administration of justice less imperfect, and more effective. It should, be universally understood, as the fact is, that the members of the legal profession have no interests at variance with, or distinct from, those on whose behalf they are called upon to act; in other words, from the general public. All that is required is, that their interest should not be wantonly sacrificed without the reasonable assurance of some benefit to the public.

DOUBTS ON THE STAMP LAWS.— THE NEW BILL.

We have permission to publish the following summary of some of the doubts now existing on the Stamp Acts, from the notes of Mr. Benson Blundell on such acts, preparing for publication.

TRANSFERS OF MORTGAGES.

At a time when government is taking in hand the revisal of certain parts of the Stamp Laws, it is of importance that doubts which have existed under the old acts should be set at rest by some legislative declaration.

The most material doubts are upon transfers of mortgages, upon some of which the Stamp Office has, of late, taken upon itself to require the use of certain additional stamps, not imposed by the Stamp Acts, and contrary to the spirit thereof and of the decided cases; whilst, at the same time other deeds have been passed, as it were, upon a nominal duty, in comparison to what they ought to bear.

The great evil is, that though the advice of the Stamp Office be taken, the party is still open to have his deed questioned at a future day, when brought into Court, and at a time when it is too late, for that tribunal, to remedy the evil.

To understand the difficulties, it may be premised, that it is generally understood the *ad valorem* duty on mortgages is a personal charge on the mortgagor for the benefit of the loan he has accomplished, without reference to the nature or number of the securities which may be included in the proposed mortgage,¹ and having submitted to such payments, every easement is then

¹ See the judgments in *Doe d. Barltby v. Gray*, 3 A. & E. 69; and *Doe d. Small v. Fox*, 3 Gale & D. 637, and 4 Q. B. 617.

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gives to the borrower, freeing him from the necessity of again paying such duty, however often a transfer may be made from mortgagee to mortgagee; and therein including a benefit for the lender, whose want of a return of his loan is considered within the necessities, already paid for, of his immediate borrower.

Without such exception in favour of a borrower, obliged to take up money from a fresh lender to pay off the first, each of such transactions, or transfers, would form a fresh and independent loan, and again subject the borrower as upon the original loan; but, so far from the legislature intending that the benefit of such exemption should, directly at least, extend beyond such original borrower, that persons, not being the original borrowers, joining in any such transfers, are excluded from the benefit of any such exemption; such transactions being declared to be original mortgages. Indirectly, such latter parties profit by such exemption, where the transfer is made by the mortgagee alone, as a means of replacing the money so lent by him.

Up to a very recent period, the usage of the Stamp Office had been to consider that, upon a transfer of a mortgage, a covenant from the mortgagor to the new lender, and a new proviso for redemption corresponding with the day of payment, the new covenant did not make the transaction less a transfer, because it was only expressive by the deed of what had been agreed to between the original borrower and the new lender, that a day beyond that in the original mortgage, which had already passed, should be given for payment of the new loan, — and this was only reasonable; for if the old day of payment was past, to transfer the debt then payable would in nowise benefit the borrower, as he would only be changing such immediate right of action against himself from the old to the new lender. And even more than this, if on a transfer an additional sum was advanced, and extra powers or securities were given extending to the old and new loan, such additional powers and securities were not considered as requiring additional duties beyond the *ad valorem* duty on the extra advance,² which was fully in accordance with the remark already made; that the duty has reference to the loan, and not to the securities.

Why the Stamp Office have abandoned such view, and now hold that a new covenant from the mortgagor to the trans-

ferree on a further security given, amounts to something beyond a transfer, and requires an additional stamp, it is very difficult to say, except that they have formed a mistaken view of several very recent cases, one view, on which they are most egregiously at fault being, that if a person borrows money on estate *A*, and subsequently borrows further money from the same person or from a transferee on estate *B*, at the same time making the latter estate subservient as a further security, as well for the old as the new loan, in such a case the payment of *ad valorem* on the further advance, is not sufficient, but the deed requires an additional stamp to cover the supposed additional security. In support of this view, the case of *Lant v. Peace*³ has been relied on, and it would have been of very little importance to the public, so far as the amount of duty (35s.) was in question, that such case decided as much, had it so done; and the decision been made known; but the case does not decide as much or profess to hint at such a decision. On the contrary, it merely decides that if two become jointly liable for a debt incurred by the two, and one of them afterwards, on his own separate account, takes up money (from the mortgagee, or his transferee, of the debt of the two) and for which he pledges a separate estate of his own, at the same time pledging such separate estate for the joint debt of the two by way of further security — such security is liable to duty beyond the *ad valorem* on the second loan, because the two loans cannot be amalgamated in strictness into one, as would be the case if the first debt had been the debt of the second borrower alone.

The evil arising from the view taken by the Stamp Office is, that upon a transfer with further advance and additional security added, it is not considered sufficient, (so far as the advice of the Stamp Office may be taken on the subject,) to pay *ad valorem* merely upon the further advance; but it is considered necessary to put on a stamp additional to the *ad valorem* stamp to cover the additional security brought in; and upon this the Stamp Office profess to be fortified by the case of *Brown v. Pegg*,⁴ that case, however, seems to be one on which a still more erroneous view seems to have been formed by the Stamp Office than that formed on *Lant v. Peace*. For in *Brown v. Pegg*, the Court, though it professed to talk about a deed stamp, because

² See Tilsley, 475.

³ 8 A & E. 248.

⁴ 6 Q. B. 1.

such a stamp was talked about as necessary in the course of the argument, did not decide that a deed stamp *only* was necessary, but it contented itself by deciding, that *at least* a deed stamp was necessary. But with this case, followed by two others,⁵ commences an entire new view, viz., whether upon the transfer of a mortgage, the mortgagor not continuing the same person, the transfer is to be treated in the same manner as though the mortgagor was the same person.

The 55 Geo. 3, c. 184, distinctly, as we have seen, laid it down, that a transaction by way of transfer, where the owner of the equity joining was *not* the original mortgagor, should be treated as an original mortgage, and pay accordingly; and the only ground for saying that it is not now to be so treated, but as a transfer, and in like manner as though joined in by the original mortgagor is, that the 55 Geo. 3 so far as relates to transfers has been repealed by the 3 Geo. 3, c. 117, whereby all transfers are said to be put upon the same footing, the repeal being so strong as to have wiped away not only every portion of the former act which at all related to transfers, but every part therein which was explanatory only, or declaratory, of what should not be considered as transfers, but original mortgages, viz., transfers by persons not being original mortgagors, as *e.g.*, such persons as in *Brown v. Pegg*, and the two subsequent cases, were the persons professing to join—not being the original mortgagors. But though the terms of the 3 G. 3, c. 117, are so very general as to lead to the supposition that all transfers are exempt, there is nothing to prevent the Courts from reading the first act without referring to the second, upon any question relating to what is and what is not a mortgage, in contradistinction to what is a transfer of a mortgage. When once decided that the deed in question is a transfer, and not a mortgage, then the first act is wholly silent upon the duties payable on such deed, and the second act alone has force, and such seems to have been the opinion of the Court of Exchequer in the case of *Doe d. Bowman v. Lewis*,⁶ a case which has been complained of by the Stamp Office,⁷ because the judges made reference to a portion of the first act supposed to be repealed; but there is no ground

for saying that it is repealed, so far as it is declaratory of what is and what is not an original mortgage, and it is open to refer to it at the present day for such purpose, if reference be necessary.

But it scarcely is so, as to questions whether transfers by a person, not the original mortgagor, are exempt; because, though such explanatory clauses at once determine them to be original mortgages, they are equally so without any such explanation. For to make the transfer of a debt complete it is necessary to have the full assent of the original debtor, so as to make the debt *directly* payable from him to the transferee. But, if the original mortgagor has assigned his equity of redemption, and the assignee comes to pay off the mortgage, and for such purpose takes up money from a new mortgagee to pay off the old one, such debt is a new one, and in nowise a transfer of the old one; for directly the first mortgagee is paid, all his equity against the mortgagor is gone, nor can he give an authority to the transferee to sue in his name, as the money cannot even equitably be said to be taken up for the benefit of the mortgagor, and consequently when the mortgagee is paid, all privity between him and the mortgagor ceases, and the mortgagee cannot, and much less the assignee, keep alive, or rather recreate, any claim against the mortgagor, without his assent; and, therefore, the only person the transferee, so called, has to look to in any such transaction is the assignee of the equity, to whom he has lent his money, and as between such assignee and the lender there can be no pretension for calling the loan a transfer, instead of an original mortgage.

Applying these views to the cases of *Humberston v. Jones* and *Doe v. Gutteridge*, it will be found that in the one the heir, and in the other the devisee of the original mortgagor, were the parties professing to make a transfer, not confining themselves to giving covenants to the extent of assets, or giving further security out of the assets, but covenanting generally, and consequently making the debt their own, and the mortgage the same as if then for the first time imposed upon the property. It has been thought that the Courts in both such cases considered a deed stamp as sufficient, but there is no pretence for saying that the Court stated what stamp in particular was requisite,—certainly not in *Humberston v. Jones*; and in *Doe v. Gutteridge*, out of six reports of the case, it is to be collected that Mr. Justice Wightman said in substance, that in

⁵ *Humberston v. Jones*, 16 M. & W., 763, and *Doe d. Crawley v. Gutteridge*, 17 L. J. Q. B. 99.

⁶ 13 M. & W. 241; See *Tinsley*, 457.

all events, a deed stamp would be necessary; while Lord Denman and the other judges considered it as a *new* security.

We have shown in these few general remarks quite sufficient for the legislature to pause before passing their present bill, which, as it now stands, leaves all these questions in doubt, and these are far from being the only ones pointed out at large in the Notes to which we refer.

STAMP DUTIES BILL, 1850.

EXTRACTS FROM THE REPORT OF THE PARLIAMENTARY COMMITTEE OF THE INCORPORATED LAW SOCIETY.

THE Committee have considered the bill, and if its object had been merely to reduce in some cases, and to increase in others, the existing stamp duties, the society might not have been called upon to interfere with the subject; but the Committee find that, in addition to that object, the bill, in its present shape, operates to alter most materially the existing law and practice with respect to stamps in general, and to impose new *ad valorem* stamp duties on matters not now liable to such duties, whilst it does not attempt to remedy any of the numerous inconveniences arising from the doubts and difficulties in the construction of the Stamp Acts; and, therefore, the Committee think that the attention, not only of the profession, but also of the members of the legislature, and of the public in general, on whom the duties are to be imposed, ought to be called to the nature and objects of the bill.

The 5th clause, which is *ex post facto* in its operation, effects a material change in the present law and practice as to stamping deeds, and throws a dangerous responsibility upon solicitors. The existing law, by which no deed can be given in evidence without having been previously stamped, and the penalty for stamping after execution, have hitherto been considered a sufficient protection to the revenue. The penalty by the 6th clause of this bill is proposed to be increased to 10*l.*, or double the duty if the stamp be more than 10*l.*, which would of course increase the protection. No case whatever has been even suggested for imposing, as the 5th clause proposes to do, either upon the party to the deed or the solicitor preparing it, the penalty of being rendered a *debtor to the Crown* for the stamp duty upon it, if he have already omitted, or shall hereafter omit, to pay it; or if he have prepared, or shall in future prepare, any instrument liable to duty, and not duly stamped. Against these omissions a novel and summary remedy is given by the bill; and the Committee need only remark, as showing the danger and injustice, that the penalty and remedy would attach to a mistake in the interpretation of a law universally admitted to be obscure, and upon which even Courts of Justice have frequently come to conflicting decisions.

The Committee, therefore, submit that this clause ought not to stand part of the bill.

The Committee would next advert to the proviso contained in Schedule B., page 27, under the head "Mortgage," that every mortgage stamped after execution shall take effect as a charge *only from the day on which it shall be so stamped*, as if the same had been then first executed. This proviso is open to the same objection upon principle as the 5th clause; it would introduce an entirely new and exceptional law with respect to mortgages. It will interpose most serious and perhaps, in some cases, insurmountable difficulties in effecting the loan of money by mortgage, and will be the means of causing great losses and expenses to parties borrowing or lending money, to say nothing of the litigation to which it must give rise. By a mistake which may often occur, in the amount of stamp duty payable on an intricate deed, or in counting the number of words in a very long deed, the security may be rendered wholly invalid; a second incumbrancer may obtain priority over the first, and the solicitor may be rendered personally liable for the consequences of a mere mistake in the construction of an act difficult to be understood, or in counting the words of a deed:—it would, in fact, entirely put an end to the possibility of raising money by deposit of title-deeds, stocks, shares, bills of lading, and other securities usually taken by bankers. On these, and other grounds, it appears to the Committee that this proviso ought to be omitted from the bill.

Schedule A. contains the duties repealed by the bill, and Schedule B. the duties granted in lieu of them. The effect of the alteration may be stated generally, as reducing the *ad valorem* duties payable upon purchases, mortgages, and settlements of a small amount; and very materially increasing such duties upon similar transactions of a larger amount; and as imposing new *ad valorem* duties on matters usually included in family settlements, to an extent which the Committee can hardly believe to have been foreseen or intended by the framers of the bill.

The Committee need hardly observe that the principle of charging *ad valorem* duties on money which, being subject to contingencies, may never become raisable or payable, is totally new, yet such would seem to have been the intention of the framers of the bill. The *ad valorem* duty, if imposed at all, ought to be imposed on the deed, by which the power of charging portions and life annuities is exercised, and not on the settlement creating it, in which case the duty would be paid upon the happening of an event, and not upon an event that may never happen.¹

¹ Most settlements would contain remainders in favour of collateral branches under which life estates in succession would be created, and power given to each tenant for life to charge jointures and portions, to take effect in case of failure of the first limitations. According to the tenor of the bill, the value of such jointures

According to the bill, articles for settlement, as well as the settlement in pursuance of such articles, would both be liable to *ad valorem* duties, of the same values and upon the same sums; and in the case of a settlement under the directions of a will, each portion and annuity, as it fell into possession, would pay legacy duty in addition.

A different principle is introduced with regard to agreements of leases, which are to be made liable to *ad valorem* duties, but with an exemption from such duties in favour of leases, where the duties have already been paid on the agreements; but there is no provision authorising the apportionment of rent mentioned in an agreement (as for building leases) amongst the several lessees where several leases are granted to different lessees under one agreement.

One object of the bill being to reduce the stamp duties on small purchases, mortgages, and leases, it follows that the duties on *all instruments* required in, or consequent upon, such transactions ought to be reduced in the same proportion as those on the principal instruments. The conveyance not for valuable consideration of land purchased for 25*l.* would require a stamp of 1*l.* 15*s.*, though the stamp on the purchase deed were only 2*s.* 6*d.* The transfer or reconveyance on a mortgage for 50*l.*, bearing a stamp of 5*s.*, would still require a stamp of 1*l.* 15*s.* In cases of purchases and mortgages, and of leases not at rack rent, affecting property in the register counties of Middlesex and York, memorials must be registered, the stamp on which is 10*s.*, which will still attach to the memorial, although the conveyance or lease bear an *ad valorem* duty of 2*s.* 6*d.*, or the mortgage bear a duty of 5*s.* only. The same anomaly will apply in copyhold assurances.

The Stamp Act of 1808, granting *ad valorem* duties on conveyances, contained a provision that the duties should not apply to purchases made before the passing of the resolutions on which such duties were granted, which provision was continued by the Stamp Act of 1815. The bill contains no such provision; the Committee submit that it is but reasonable that purchases and mortgages contracted for, and settlements under instruments in force, before the passing of the resolutions on which the bill is founded, but not completed before the new duties come into force, should be liable only to the existing duties.

The Committee suggest that it would be desirable that this bill should provide the means of effectually solving some of the doubts and difficulties which have arisen, and are perpetu-

ally occurring, on the construction of the existing Stamp Acts; and which not only lead to much litigation and expense, but also have often the effect of prejudicing, or even destroying, the rights of parties claiming under deeds affected by such doubts and difficulties.

The Committee suggest that it would also be desirable to introduce a clause enabling parties, when an objection is taken to the validity of a deed, by reason of its being insufficiently stamped, to pay to the officer of the Court before which the objection is taken, the amount of the deficient duty and penalty thereon, under proper regulations.

The Committee also suggest that much litigation, attended with danger and expense to the public, would be avoided by the introduction of clauses enabling the Commissioners of Inland Revenue in cases of doubt or difficulty in the construction of the Stamp Acts, to fix the duty payable according to their construction, and their certificate expressed on the deed should be conclusive on the sufficiency of the stamp, subject to the right of the party liable to the duty objecting to such construction, to have the opinion of one of the judges on a case, which should be final, as in surcharges under the Assessed Taxes Acts.

RULES OF PRACTICE

FOR

THE COUNTY COURTS OF ENGLAND.

OUR readers are aware that the Lord Chancellor, under the provisions of the Small Debts Amendment Act, 12 & 13 Vict. c. 101, has appointed Mr. Sergeant Dowling, Mr. Brandt, Mr. Espinasse, Mr. Gale, and Mr. Furner, (five of the judges of the County Courts,) to frame such general rules and orders, as to them shall seem expedient, for and concerning the practice and proceedings of the Courts holden under the Small Debts Act, 9 & 10 Vict. c. 95, and for the execution of the process of such Courts, and in relation to any of the proceedings of the Act, as to which there may have arisen doubts, or have been conflicting decisions.

Under this Commission, the several Law Societies and other professional bodies have been invited to make such suggestions as may occur to them with reference to the propriety of continuing, altering, or adding

and portions would be chargeable with *ad valorem* duty, but how that value is to be ascertained, the bill does not point out, and the Committee are unable to suggest. The penal remedies, however, in the 5th clause against the parties to the settlement, or the solicitor preparing it, would clearly apply if it be insufficiently stamped.

* The Committee give as instances transfers and further charges on mortgage transactions, and refer to the following conflicting cases:—*Doe d. Barley v. Gray*, 3 A. & E. 89; *Doe d. Barnes v. Rowe*, 4 Bing. N. C. 737; *Brown v. Pegg*, 6 Q. B. 1; *Humberston v. Jones*, 16 M. & W. 763; *Lunt v. Pearce*, 8 A. & E. 248; *Doe d. Stoll v. Tom*, 3 G. & D. 637.

to the rules, and also any observations they may have to make generally on the jurisdiction and proceedings of the County Court.

Copies of the rules have been sent to the Law Society and other parties; but it will be desirable to place them before our readers, especially as several of them have communicated their intention of making suggestions on the subject.

PLAINTS.

1. **EVERY** complaint must be entered upon application at the office of the clerk, pursuant to the form in the plaint book in the schedule to these rules annexed.

2. **Particulars of demand.**—On entering the plaint, the plaintiff shall, if the sum sought to be recovered shall exceed 5*l.*, deliver at the office of the clerk, as many copies of a statement of the particulars of his demand or cause of action, as there are defendants, with an additional copy to file: Provided always, that in all cases, the judge, in his discretion, and on such terms as he may think fit, may adjourn the cause at the hearing, for the delivery of a statement of particulars or further particulars.

3. **Plaintiff's note.**—At the time of entering the plaint, the clerk of the Court shall give to the plaintiff a note according to the form in the said schedule; and no money shall be paid out of Court to the plaintiff unless on production of such note, or by order of the judge.

4. **Summons.**—The summons to appear to a plaintiff shall be issued according to the forms in the schedule, and shall be dated as of the day on which the plaint was entered.

5. The clerk shall annex to each summons to be served, one of the copies of the statement of the particulars of the plaintiff's demand furnished to him pursuant to Rule 2, sealed with the seal of the Court.

6. **Service of summons.**—Every such summons must be served 10 clear days before the holding of the Court at which it shall be returnable.

7. The service of any summons to appear to a plaintiff, must be either personal, or by delivering the same to some person at the place of abode or the place of business of the defendant.

8. Where a defendant shall be living or serving on board of any ship or vessel, or be residing or quartered in any barracks, and serving her Majesty as a soldier or marine, it shall be sufficient service to deliver the summons to the senior officer on board, or to the person who may at the time have charge of such ship or vessel, or to the adjutant of the corps, or any officer or sergeant of the company to which such soldier or marine shall belong or be attached.

9. Where a defendant shall be working in any mine or other works carried on under ground, and the bailiff shall not be able to serve him with a summons, as hereinbefore directed, it shall be sufficient service to deliver the summons to the engine-man, bank-man, or other person in charge of such mine or works.

10. Where any defendant, by neglecting his house or place of abode, or by violence or threats, prevent any bailiff from serving the summons as hereinbefore directed, and such summons shall have been affixed on the door of such house or place of abode, or otherwise served as nearly as may be according to the mode hereinbefore directed, such service shall be deemed good service.

11. Provided that in all cases where a summons to appear to a plaintiff shall not have been served personally, and the defendant shall not appear at the return day, it must be proved to the satisfaction of the judge, that the service of such summons has come to the knowledge of the defendant ten clear days before the said return day.

12. Where any such summons has not been served as hereinbefore directed, the judge may, in his discretion, in order to save the Statute of Limitations, direct another summons or successive summonses to be issued, bearing the same date and number as the first summons.

13. The bailiff who serves a summons to appear to a plaintiff, shall endorse on a copy of such summons, the time and the manner of the service thereof, and shall produce such copy, so endorsed, at the Court at which such summons shall be returnable and such copy shall be filed by the clerk of the Court.

14. The above rules, except Rule 11, as to the mode of service of summonses to appear to a plaintiff, shall apply to the service of all summonses, judgments, orders, notices, and process whatsoever, issuing under the authority of the said act, except where otherwise directed by the said act or any rule made under the authority thereof.

15. **Payment of money into Court.**—Where the defendant pays money into Court, the same must be paid into Court five clear days before the return of the summons.

16. If the plaintiff elect to accept in full satisfaction of the debt or damages claimed, such part thereof as shall have been paid into Court by the defendant, and shall give a written notice to that effect to the clerk of the Court, and a like notice to the defendant by serving the same on such defendant personally or leaving it at his place of abode or business, three clear days before the return of the summons, the action shall be discontinued, and the plaintiff shall not be liable to any further costs. But in default of giving such notice, the suit will proceed; and if the plaintiff do not appear at the hearing, he shall be liable to pay to the defendant such costs as he may incur in appearing to try the cause, or such other sum of money as the judge may order.

DEFENCE.

17. **Set-off.**—Where a defendant desires to set off any debt or demand alleged to be due to him by the plaintiff, he must give notice thereof in writing to the clerk of the Court, and deliver to such clerk two copies of a statement of the particulars of such set-off, five clear days before the return of the summons.

18. The clerk of the Court shall give to the plaintiff's notice of such set-off, according to the form in the schedule, in manner directed by the act, together with one of the copies of such particulars of set-off, sealed with the seal of the Court: Provided always, that where such notice shall not have been given, the judge in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned as the judge shall think proper.

19. *Other special defences.*—Where a defendant intends to rely on the special defence of infancy, coverture, the Statute of Limitations, or his discharge under any statute relating to bankrupts, or any act for the relief of insolvent debtors, he shall give notice thereof in writing to the clerk of the Court, five clear days before the day on which the summons is returnable: Provided always, that where such notice shall not have been given, the judge, in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause, to enable the defendant to give such notice such number of days before the day to which the hearing may be adjourned, as the judge may think proper.

20. *Jury.*—Every notice of a demand of a jury, where the debt or demand claimed shall exceed 5l., must be made in writing to the clerk of the Court two clear days before the return of the summons.

21. *New trial, setting aside proceedings, &c.*—No application for a new trial, or to set aside any proceedings, shall be made subsequently to the Court at which such trial or other proceeding shall have been had, unless the party making such application shall have given a written notice thereof to the clerk of the Court at his office, and to the other party, by serving the same personally on each party, or leaving the same at his usual place of abode or business, seven clear days before the time of holding the Court at which such application shall be made.

22. *Notice to retain money in Court.*—Where any money is paid into Court under any execution or order of the Court, if the clerk receive notice from any party of his intention to apply to the Court to set aside the execution or order under which such money is paid into Court, the clerk shall retain the same, until after such application has been determined, or until the judge shall otherwise order.

JUDGMENT.

23. *Installments.*—When any order is made for the payment of any debt, damages, costs, or other sum of money by instalments, such instalments shall be payable at the office of the clerk of the Court, at such periods as the Court shall order; and if no order be made, then the first shall become due at the expiration of one calendar month from the day of making the order, and every successive instalment at like periods of a calendar month from the day of the previous instalment becoming due.

24. *Replevin.*—Where any cattle, goods, or chattels taken as a distress for rent in arrears, or damage-faisant, shall have been replevied by the sheriff, the party at whose instance such replevin shall have been made, shall enter his plaint in the Court held under the authority of this act, for the district within which such distress may have been made.

25. On entering a plaint in replevin, the plaintiff must specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains.

26. All actions of replevin in cases of distress for rent in arrear, or damage-faisant, shall be tried in a summary way as other actions in the Courts held under the authority of this act, and the judgment therein, in ordinary cases, whether for plaintiff or defendant, shall be according to the forms in the schedule, or to the like effect.

PROCEEDINGS IN NATURE OF SCL. FA.

27. Execution on a judgment is not to issue by or against any person not a party to such suit, without a plaint and summons upon the judgment, the proceedings in which shall be the same as in ordinary cases.

29. Where a judgment has been given for or against a person deceased, his executors or administrators may in the same manner sue or be sued upon the judgment.

29. *Judgment against executors and administrators.*—The ordinary judgment against executors or administrators shall be, to pay the debt or damages and costs to be levied out of the goods of the deceased in their hands, and as to the costs, if there are no such goods, then to be levied out of their own goods.

30. Where the defence is, that executors or administrators have fully administered, if it be adjudged by the Court that they have assets not administered, then a like judgment shall go as in the above case, but only as to the goods of the deceased to the amount proved to be in their hands, and of assets *quando acciderint*, as to the residue: the judgment as to costs shall be, that they be levied *de bonis testatoris, &c., et si non, de bonis propriis*.

31. If the sole defence by executors or administrators be, that they have fully administered, and the judgment of the Court is for the defendants, it shall be, that the amount found to be due be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the judge.

32. Where judgment has been given against executors and administrators, that the amount be levied upon assets of the deceased *quando acciderint*, the plaintiff may at any time proceed by plaint against them, suggesting that assets have come to their hands, and the Court shall proceed and give judgment thereon, if for the plaintiff, as in Rule 29, and if for the defendants, they shall be entitled to their costs.

33. *Devastant.*—Where judgment has been given that the debt (or damages) and costs be levied *de bonis testatoris*, and the plaintiff con-

pleins that the defendants have been guilty of a *deceit*, inasmuch as no goods of the deceased are forthcoming to satisfy the execution issued, then a summons may be taken out in the form given in the schedule, or to the like effect, and thereupon, as in ordinary cases, the Court shall proceed to the hearing and judgment, and if judgment be given against such executors or administrators, then it shall be that they pay the debt, or damages and costs, to be levied *de bonis testatoris si, &c., et si non, de bonis propriis*.

34. Where in an action against executors or administrators the defence is, that they are not executors or administrators, or it is founded on some matter or thing arising since the death of the testator or intestate, *ex. gr.* a release to the defendants, if the judgment of the Court be against them, it shall be, that the debt, or damages, and costs be levied and paid *de bonis testatoris si, &c., et si non, de bonis propriis*.

35. The judge shall in each case order what number of witnesses shall be allowed on taxation of costs, the allowance for whose attendance shall be according to the scale in the schedule, unless otherwise ordered, but in no case to exceed such scale.

36. All costs shall be taxed by the clerk of the Court.

37. *Execution*.—No warrant of execution or commitment shall be executed after the expiration of two calendar months from the date thereof.

38. *Summons for commitment*.—Every summons for a party to appear to be examined upon oath, pursuant to the 89th section of the said act, shall be served not less than three clear days before the day on which the party is required to appear to such summons: Provided always, that service of such summons at any time before the time appointed for the appearance of such party, may be deemed by the judge to be good service, if it shall be proved to his satisfaction, that such party was about to remove out of the jurisdiction of the Court.

39. *Interpleader*.—Where any claim shall be made to or in respect of any goods or chattels taken in execution under the process of any Court holden under the authority of the said act, or in respect of the proceeds or value thereof, by any landlord for rent or by any person not being the party against whom such process has issued, and summonses have been issued on the application of the officer charged with the execution of such process, such summonses shall be served in such time and manner as hereinbefore directed for a summons to appear to a plaintiff, and the claimant shall be deemed the plaintiff, and the execution creditor the defendant; and the claimant shall, five clear days before the day on which the summonses are returnable, deliver to the said officer, or leave at the office of the clerk of the Court, a particular of any goods or chattels alleged to be the property of the claimant, and the grounds of his claim, or in case of a claim for rent, of the amount thereof, and for what period the same is claimed to be due.

40. *Clerk's duties*.—The clerk of every Court shall keep the several books, and in the form in the schedule.

41. Every entry in such books shall have a number prefixed, corresponding with the number of the plaintiff to which it refers.

42. The clerk of every Court shall have an office at each place where the Court at which he is clerk is held.

43. All matters or things required to be done by the clerk of the Court may be done by the clerk of the Court, or by the assistant clerk or clerks provided by him.

44. The office of the clerk shall be open daily, and the office hours shall be from 10 o'clock in the morning until 4 in the afternoon.

45. *Bailiff's return to summons*.—At every Court, or at such other times as the judge shall require, the high bailiff shall deliver a statement or return, pursuant to the form in the schedule, of what shall have been done since his last return under every process of execution or commitment, which he shall have been required to execute.

46. Eight days before the day of the holding of the Court, the high bailiff shall deliver to the clerk of the Court a list of all summonses to appear which shall have been served, and the clerk shall forthwith stick up such list in his office.

47. Every high bailiff required to execute any warrant of execution or commitment issuing out of any other Court, shall make a return to such last-mentioned Court forthwith on the execution thereof; and if he shall not have executed such warrant, he shall return the same at the expiration of two calendar months from the date thereof.

48. Every bailiff levying or receiving any money by virtue of any process issuing out of the Court of which he is bailiff, shall, within three days after the receipt thereof, pay over the same to the clerk of such Court.

49. If any high bailiff shall have levied or received any money under any process issuing out of any other Court, he shall within three days from the receipt thereof, pay over such money, retaining the fees for execution thereof, to the high bailiff of such last-mentioned Court.

50. No summons, notice, order, or other process shall be served on Sunday, Christmas-day or Good Friday; but such days shall be counted in the computation of the time required by these rules, unless any of such days shall be the last day of such time, in which case it shall be excluded from such computation.

51. In case of proceedings not provided for by the forms in the schedule, the clerk of the Court shall issue the necessary process, using, where practicable, the forms prescribed in the schedule as guides in framing the same.

52. *Construction*.—Wherever the singular number is used in these rules in reference to persons or things, it shall be understood, when necessary to give full effect to the rule, to mean several persons or things; and every word importing the masculine gender shall in like man-

may be necessary, be understood to include the following gendres.

(Signed)

FRED. POLLOCK.
WM. WIGHTMAN.
C. CRESSWELL.
W. REE.
E. V. WILLIAMS.

We presume that one of the leading principles which will guide the learned Commissioners in revising the code of practice will be that of *uniformity* of decision in all the Courts. With this view, we understand that the Commissioners have already communicated with the City of London Small Debt Court. It would indeed be a singular anomaly in the administration of justice in Courts of similar jurisdiction, that the inhabitants on one side of Temple Bar should be governed by one set of rules, and on the other by a different set; and so of Aldgate and the other gates, which, though now unseen, form the legal boundaries of the ancient metropolitan province.

Again, in that branch of the jurisdiction of the County Courts which relates to insolvent debtors, it will be equally important that there should be a strict uniformity of procedure. Supposing the limits of the London Insolvent Debtors' Court to be 20 miles round London, (the diameter being therefore 40 miles and the circumference about 120,) it would be a great public grievance if in that large district there should be a variance from the rules and regulations adopted in the several circuits of the other parts of the country. We trust, therefore, that the London Insolvency Commissioners and the revising judges of the County Court rules will come to a good understanding, so that the mode of procedure will be similar in all parts of the country.

After the approval given by the Attorney and Solicitor-General to the rule laid down by Mr. Serjeant Dowling on the Yorkshire Circuit, by which attorneys have equal audience with barristers, as well in insolvency as in all other matters, we presume that one of the new rules will follow that decision and dispose of the unseemly dispute on that subject.

We reserve the detail of some other suggestions which occur to us, in regard to the due qualification of those who practise before the Court. They ought to be barristers or *certificated* attorneys, and if not in the Law List, should produce their certificates, and to prevent imposition should sign their names in a list or roll,—otherwise an unqualified person may assume the name of an attorney and escape detection.

THE NEW COPYHOLD BILL.

THIS is a bill to effect the compulsory enfranchisement of Lands of Copyhold and Customary Tenure.

Section 1 recites the acts 4 & 5 Vict. c. 35; 6 & 7 Vict. c. 28; and 7 & 8 Vict. c. 59; and that it is expedient to extend the provisions of those acts; it is enacted, that memorial rights; as in the bill expressed, may be commuted by the Copyhold Commissioners on the application of a tenant, whether the lord shall or shall not assent to such commutation, or on the application of the lord, whether the tenant shall or shall not assent to such commutation.

Sec. 2 enacts, that any tenant, or lord, may apply in writing to the Commissioners to effect a commutation; and thereupon the Commissioners by themselves or an assistant Commissioner shall communicate with the lord or tenant whose rights are to be effected, and shall require into, ascertain, and fix the value of such memorial rights, and nature and amount of consideration, for which the commutation shall be made, except that when application is made by the lord, the nature and amount of consideration shall be regulated as after mentioned.

By sec. 3, a commutation made on application of a tenant may, at discretion of the Commissioners, be made for all or any of the considerations for which a commutation or enfranchisement may be made under any of the recited acts, (subject to provisions after contained,) and paid and applied in the manner.

By sec. 4, no application on the part of a lord shall be entertained, except on the application of a tenant or within six months afterwards, and the Commissioners, in fixing amount of consideration, shall take into account the fine on admittance, and declare that the consideration shall consist of two parts, a sum of money to be paid to the lord, and a rent-charge to commence forthwith, variable or not variable, as in the first recited act mentioned; and the Commissioners may fix the respective amounts of money and rent-charge as they think proper.

By sec. 5, where the lord, having given such notice, shall have received the fine on admittance, then, if the sum of money fixed by the Commissioners to be paid shall be less than the fine, the lord shall repay the difference to the tenant or allow such difference in receipt with such tenant.

By sec. 6, (sec. 3, bill of 1849,) where the consideration shall be fixed, the Commissioners shall issue a certificate of commutation, under their hands and seals, containing the particulars expressed in the section, and which shall be forthwith entered on the Court rolls, by the steward, for which entry he shall only charge 1*l.*, (unless the Commissioners shall, under the

The parts in italics, are the alterations from the bill of 1849, where greater part of the section is the same. The sections marked with * are new.

peculiar circumstances of the land, and a further sum; and a duplicate of the certificate shall be registered at the office of the Commissioners, and, whether enrolled or not, the certificate shall take effect from execution by the Commissioners.

By sec. 7, (sec. 4, 1849,) the Commissioners may, with consent, correct errors in certificates.

By sec. 8, (sec. 5, 1849,) sealed copies of registered certificates shall be evidence, and entry of certificates on Court rolls, or a copy, as available for evidence as any other entries on Court rolls or copies.

By sec. 9, (sec. 8, 1849,) the Commissioners may act on agreement in writing of lord and tenant, as to annual value of lands and nature and amount of consideration; and if the lord and tenant shall not agree, the Commissioners shall appoint a valuer, and the expense of valuations, unless otherwise directed by the Commissioners, or otherwise provided by agreement, shall be payable by the person applying for commutation.

By sec. 11, (sec. 9, 1849,) the valuer shall take into account the facilities for improvements and other circumstances, and make due allowance for same.

By sec. 12, (sec. 10, 1849,) the Commissioners, or assistant Commissioner or valuer may enter on and inspect lands, make measurements, plans, and valuations.

By sec. 13, (altered from 13, 1849,) the Commissioners may suspend proceedings, where peculiar circumstances render it impossible in their opinion to decide on prospective value of the lands, or where any special hardship would result from compulsory proceedings; but must state their reasons in their general report to be laid before parliament.

By sec. 14, (altered from 11, 1849,) the lord or steward or tenant shall, on being required by the Commissioners, give information as to the lands, fines, heriots, &c., with penalties for neglect.

By sec. 15, (sec. 13 of 1849,) the Commissioners may direct notice to be given to remaindermen or other persons to whom they may think notice ought to be given.

By sec. 16, where a rent-charge has been agreed or awarded to be paid, the owner of the land may redeem it, on payment of a sum of money not less than 25 times the amount of the rent-charge.

By sec. 17, where the person entitled, for the time being, to the rent-charge, shall have a limited estate or interest, or shall be a corporation not entitled to make a sale otherwise than under this act, such person may, with the consent of the Commissioners, or in cases of coverture, infancy, idiocy, lunacy, or other incapacity, with consent of the husband, guardian, or committee, or trustee of the person under disability, sell the rent-charge; payment to be made as after mentioned.

By sec. 18, where a rent-charge is redeemable under the act, the Commissioners shall, on request of any owner of the land, certify under hand and seal, the sum of money in considera-

tion of which the rent-charge may be redeemed; and when it shall appear to the Commissioners that payment or tender has been duly made, they may certify that the rent-charge has been redeemed, and such certificate shall be final and conclusive, provided that if the payment shall be made to a person not entitled to receive the same, the land shall be charged in equity with the payment to the person rightfully entitled, as if purchase money remaining unpaid, but the same remedies may be had against the person wrongfully receiving, as purchasers are entitled to by the rules of law or equity.

By sec. 19, where the person entitled to a rent-charge redeemable under the act, shall be absolutely entitled in fee simple in possession, or enabled to dispose of fee simple in possession independently of the act, and shall not be a spiritual person entitled in respect of his benefice or cure, or a corporation prevented from alienating otherwise than under the act; a payment to such person shall be deemed a due payment, and in other cases the payment shall be according to the provisions after contained.

By sec. 20: in other cases the money shall, at the option of the person for the time being entitled, be paid into the Bank of England in the name and with privacy of the Accountant-General of the Court of Chancery, to be placed to his account, "experts the Copyhold Commissioners," and remain so deposited till applied in purchase or redemption of land tax, or other incumbrance, or in purchase of other lands to be conveyed to like use, or in payment to a party becoming absolutely entitled, and the money may be so applied on order of the Court of Chancery made on petition, and until order, may be invested in 3 per cent. consols, or government or real security, and the dividends paid to the party for the time being entitled to the rent-charge, or the money may be paid to trustees under the will, conveyance, or settlement under which the persons having a limited interest shall be entitled, or if no trustee, then to trustees to be nominated by the Commissioners, to be applied in like manner, and vacancies in the offices of trustees are to be filled up by the Commissioners.

By sec. 21, where consideration for redemption of all the rent-charge in a manner shall not exceed 20L., it shall be paid to the person for the time being entitled to the rent-charge, with provision as to incapacity, and power to the Commissioners to determine disputes.

By sec. 22, (sec. 14, 1849,) the expense of proceedings for effecting commutation under the act, shall (except where the Commissioners shall otherwise determine) be paid by the person making application for the commutation.

By sec. 23, (sec. 15, 1849,) from the date of certificate of commutation, the lands shall be discharged from the manorial rights commuted, and liable to the considerations mentioned in the certificate, and the provisions of the first recited act as to tenure, conveyance, customs and courts, shall extend to such lands.

By sec. 24, (sec. 16, 1849,) after any com-

mutation under recited acts or present act, the tenant shall, as against the lord, be at liberty to erect or remove buildings, cut timber, alter the state or condition of the lands, and commit other waste, subject nevertheless to the lord's rights in mines and minerals, where not included in the commutation.

By sec. 25, (sec. 17, 1849,) copyholder having a particular estate, and who would, if land of freehold tenure be liable to impeachment of waste, not to be enabled to commit waste as against remainder-man.

By sec. 26, (sec. 18, 1849,) after a commutation the tenant may demise without licence of the lord, and without paying a fine; but no such demise shall affect the right of the lord to have a tenant in the roll, or to enter for want of a tenant.

By sec. 27, (sec. 19, 1849,) if consideration money not paid, the lord may obtain possession as on a seizure, and receive the rents and profits. And the provisions of the recited acts, in relation to payments of consideration monies and rent-charges, to apply to like payments under present act.

By sec. 28, (sec. 20, 1849,) all provisions of the recited acts for effecting a commutation, or auxiliary to the inquiries and proceedings therein or consequent thereon, and raising and charging expenses, and other provisions not inconsistent with provisions of the present act, shall be applicable to commutations under it.

By sec. 29,* any lord or lords whose interest shall not be less than one-fourth of annual value of the manor, or any 10 tenants, or one-half, if not so many as 10 tenants on the manor, may call a meeting of the lords and tenants by 21 days' notice, in manner provided by the section, for making an agreement for general enfranchisement.

Every lord or tenant attending the meeting shall bear his own expenses, and the lords and tenants present, to extent of three-fourths in number as to tenants of the manor, and three-fourths in value as to lords, may make agreement for enfranchisement,—with power to Commissioners to decide any dispute as to sufficiency of interest.

By sec. 30,* the agreement may be made for all or any of the considerations for which an enfranchisement may be made under the recited acts, subject to provision as to rent-charge after mentioned.

By sec. 31,* the provisions in the recited acts as to commutation agreements to be applicable to enfranchisements.

By sec. 32,* after confirmation of schedule of apportionment under the present act, the enfranchisement shall take in same manner as on an enfranchisement by schedule of apportionment under the recited acts, and with the like provisions relative to the consideration, raising the expenses and otherwise.

By sec. 33, (sec. 21, 1849,) "In every commutation or enfranchisement to be hereafter effected under or by virtue of the said recited acts or this act, it shall not be imperative to make the commutation fines, or rent-charge, or

enfranchisement rent-charge variable with the prices of grain, but the same or any of them may, at the option of the parties effecting such commutation or enfranchisement, or at the discretion of the Commissioners, as the case may require, be fixed in money, or so variable as aforesaid."

By sec. 34, (sec. 22, 1849,) the certificate of commutation, or confirmation by Commissioners of any schedule, or execution by them of any deed whereby any commutation or enfranchisement has been or shall be effected under the recited acts or the present act, shall be evidence that the acts have been complied with.

By sec. 35, (sec. 23, 1849,) where gross sums of money are to be paid as consideration, and the lords shall only have a life or other limited estate, the Commissioners may apportion such money and direct such part as shall equal in their opinion his expectation, to be paid to him, and the residue invested for benefit of the parties interested in remainder or reversion.

By sec. 36, (sec. 24, 1849,) where there shall be more than one lord, such lords, or those having an interest equal to two-thirds of annual value of the manor, may, by writing under hand, appoint from time to time a person to represent the joint and several interests of the lords, and in default of appointment for three months, the Commissioners may make the appointment.

By sec. 37, (sec. 25, 1849,) no proceedings or agreements for commutation under the present act to extend to rights of the lord in mines and minerals, unless with express consent in writing of such lord, and act not to extend to lands holden by copy of court-roll or by custom of a manor for life or lives or for years, where the tenant hath not a right of renewal, unless all parties shall agree thereto.

By sec. 38, (sec. 26, 1849,) no agreement, valuation, certificate of commutation, or power of attorney under the present act shall be chargeable with stamp duty.

By sec. 39, (sec. 27, 1849,) the Commissioners shall with all convenient speed after passing the act, with assistance of a taxing master of the Court of Chancery, fix a list of fees to be payable to stewards of manors, and such list shall be laid before parliament, and within three calendar months afterwards shall be of same force and effect as if fixed by the act.

By sec. 40, (sec. 28, 1849,) after reciting the Attorneys' and Solicitors' Act, (6 & 7 Vict. c. 73,) it is enacted that such act shall be held to apply to fees and charges of stewards of manors, (whether attorneys or solicitors or not); and such fees and charges may, upon the application of the party chargeable, be referred by the Lord High Chancellor or the Master of the Rolls, to be taxed and settled accordingly.

By sec. 41, (sec. 29, 1849,) the present act is to be construed as part of the firstly recited act and the acts amending the same, and all commutations and enfranchisements which

may have taken place under any of the said acts, and all matters incident thereto, shall be of the same force as if provisions of the present act had been contained in the firstly recited act.

BOROUGH OF SOUTHWARK COURT.

To the Editor of the Legal Observer.

SIR,—I think it ought to be known to the profession that the Court of Record for the Borough of Southwark is still available for the recovery of all debts and damages to any amount arising within the ancient borough of Southwark, that is to say, the five parishes of St. Saviour, (except the Clerk Liberty,) St. Olave, St. John, St. Thomas, and St. George the Martyr.

The Borough Court is a Court of Record by prescription, of which the Recorder of London, as Steward of Southwark, is the judge.

The Court days are every Monday, when steps can be taken in actions pending. The proceedings are by plaint on which a *capias* issues returnable on the next Court day when a declaration may be filed *de bene esse*. The defendant has till the following Court day to appear and another week to plead, and on issue being joined, a week's notice of trial is given. Courts are held periodically before the Recorder and a jury.

The following counsel have been appointed by the Recorder, viz.:—Mr. Payne, Mr. Carrington, Mr. Ryland, Mr. Locke, Mr. Edmund Law, Mr. Laurie, Mr. Randall, and Mr. R. J. Corner.

The attorneys' costs on a *capias* issued and served are one guinea, and the costs of a cause tried amount to about 10l.

There were formerly only three attorneys entitled to practise in the Court, but the statute of 6 & 7 Vict. c. 73, s. 27, authorises all attorneys of the Superior Courts at Westminster to practise in Courts of inferior jurisdiction, on production of their admissions in the Superior Courts, and their certificates, and on signing the roll. Several gentlemen have availed themselves of this privilege and been admitted.

As one of the three original attorneys of the Court, I have long been desirous that the practice should be thrown open to the profession; but difficulties presented themselves in departing from the ancient number of attorneys in a prescriptive Court, which difficulties the above statute has removed, and the Recorder has been pleased to admit all such respectable solicitors as have applied to him, on their giving previous notice of their intention to apply to the ancient attorneys of the Court, in order that they may show cause, if necessary, why the parties applying should not be so admitted.—I remain, sir, your obedient servant,

GEO. R. CORNER,
Prothonotary of the Court.

19, Tooley Street, Southwark,
4th April, 1850.

THE JUDGES AND THE NEWSPAPERS.

To the Editor of the Legal Observer.

SIR,—The article in the *Legal Observer* of 6th April is one so eminently calculated to set right the unjust notions that seem to be so widely entertained respecting Mr. Justice Talfourd's late address to the jury in the Exeter case, that I think it is the duty of all members of the legal profession to agree with you, and assist, as far as possible, in vindicating the character of one of its brightest ornaments from a most slanderous imputation. I therefore take the liberty of contributing my *quota* in testimony of that which I conceive to be the able manner in which Mr. Justice Talfourd conducted one of the most difficult cases that the criminal law has had to deal with. I would suggest to those who criticise the conduct of Mr. Justice Talfourd on that trial that they should fairly consider,—1st, Whether there was any evidence of the cause of death. 2ndly, Whether there was any evidence that death was caused wilfully and with malice prepense. 3rdly, Supposing the two first questions to be affirmatively answered—whether there was one particle of evidence sufficient to induce any person to believe that the prisoners were in any way connected with that which is assumed to have caused death.

It has been suggested, that if circumstantial evidence were to be always thus rejected, that in no case of murder would justice be done. But surely, sir, there should be some one, if the world is so ignorant, to teach it better, and to stand up and vindicate the honour of the English law in this respect. Suppose that one man publicly kill another—will any one say directly without inquiry, this is murder?

How would an editor of a newspaper like the doctrine that he should be responsible in the shape of damages to any one he might have libelled without the proof of that most important ingredient in a case of libel—"Malice." But if they contend that it is not necessary to have malice proved in cases of murder, the sooner it is declared unnecessary in actions of libel against newspaper proprietors the better.

Αδελφί Μυρία.

EASTER TERM EXAMINATION.

THE Examiners have appointed Tuesday, the 30th instant, at the Hall of the Incorporated Law Society, to take the Examination of the Candidates for Admission on the Roll of Attorneys for this term.

The Testimonials are to be lodged with the Secretary of the Society on Monday, the 22nd instant.

The printed List of applications for admission contains the names of 200 persons, but 47 have been already examined and passed, and some irregularities in the notices will further reduce the list.

he may refer to them without producing them.

NOTES OF THE WEEK

The profession was doubtless much surprised on Thursday morning to read the report of the debate on this bill. The 2nd reading of which was carried by no less than 144 against 67. Many of the majority must have been laboring under an extraordinary delusion regarding the true state of the case, and when it is properly explained, the decision will no doubt be reversed. The government has just appointed five Commissioners to revise the admitted imperfections of the present rates, and it would be palpably absurd to entrust the Court to twice its existing jurisdiction before the new rules have been tried and their effect ascertained.

ANNUAL CERTIFICATE DUTY.

In little more than a fortnight, the time will arrive for resuming the debate on this partial and unequal poll-tax. The question stands first on the list for the 2nd May, and we feel assured that Lord Robert Grosvenor will be firm to his purpose in bringing on the motion, and pressing it to a division. A suggestion has been made to provide a substitute for the impost; but it is clearly understood by those who have the charge of the measure that the profession will not consent to any plan for raising the money by other burthens on the practitioners or on the administration of justice. We hear from all quarters that there is the greatest probability of success, for almost all the members of parliament have been made amply acquainted with the grounds of the claim, and almost universally admit its justice. The greatest confidence may be placed in the sense of justice of the British Parliament, whenever the true state of the facts becomes thoroughly known.

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AND SHORT NOTES ON CASES

THE SUPERIOR COURTS.
NOTES OF CASES.

was vested in the defendants through the original lessee. The Master of the Rolls having set aside the lease and directed a reference for an account from the year 1845, when the information was filed, this appeal was presented.

James Parker and Rogers for the informants;
Roupell and Elmsley for the defendants; Hall
for the churchwardens.

The Lord Chancellor said, that the rule in respect of charity property was where it was aliened for inadequate consideration, the lease would be set aside, and subsequent leases were to be taken to have had notice. There was nothing in the present case to except it from the rule, and the appeal would be dismissed with costs including those of the churchwardens.

There was an information to set aside a lease of certain charity property in Norwich, for 999 years, at a yearly rent of 10*l.*, granted by the trustees in 1690 to John Coppock, the rent to be employed upon the trusts of the will of Robert Dary, dated in 1524, for the repair of St. Andrew's church in Norwich. The value of the property was considerably increased and

In re Estate of *William Eden*, deceased.
William Eden, March 8, 1850. 13 N. Y. 200.

WINDING-UP ACT.—CONTRIBUTORY.—HUSBAND OF FEMALE SHAREHOLDER.—SALE TO DIRECTORS.

Held, on appeal from the Vice-Chancellor Knight Bruce, that where the husband of a female proprietor sold the shares within six months after the marriage to the directors, that he was not liable as a contributory under the 11 & 12 Vict. c. 45.

Upon the marriage of Mary Dade with the respondent, Mr. White, she was an original proprietor in the above company for 25 shares, which however, Mr. White sold to the directors within six months. The Vice-Chancellor Knight Bruce, having refused a motion on behalf of the official manager to insert Mr. White's name on the list of contributors under the 11 & 12 Vict. c. 45, without qualification, this appeal was presented.

J. Russell, and Terrell for the appellant; Bacon and Southgate for the respondent.

The Lord Chancellor said, that the company's act, which prescribed certain acts to be done by the husband of a female proprietor within six months after marriage, did not prevent the directors purchasing before the expiration of the six months, and dismissed the appeal with costs.

Master of the Rolls.

Wilson v. Eden. March 5, 6, 1850.

WILL.—CONSTRUCTION.—TERMINATION OF PREVIOUS BEQUESTS.—ISSUES AT LAW.

Upon construction of a will, the opinion of the Court of Queen's Bench was confirmed, the testator's granddaughters being entitled on the determination of the previous estates.

PETER JOHNSON, by his will, dated in 1779, settled real estates, after his wife's death, on his only child Dorothea, wife of Sir John Eden, for life, remainder to her eldest son Robert for life, remainder to his issue male in tail general, remainders to her second son, Morton John, for life, remainder to his issue male in tail general, remainders to her other sons successively in tail general. There was also a proviso, that if Morton John, or any other of her sons, except the eldest, became entitled to certain estates devised by Mr. Mortimer Davidson, all his or their interest in the estates should cease. And it was provided that, if the testator's daughter should have no issue male her surviving, or none entitled to take under his will, the real estates should go to all the daughters of the body of his daughter as should be living at her death as tenants in common, and to their heirs respectively, with cross-remainders amongst them.

The daughter died in the testator's lifetime, leaving the two sons above mentioned and eight daughters; and Morton John, after becoming possessed of the estates under Mr. Davidson's will, died without issue; and Robert also died without issue, and bequeathed

his real estates to the same, Sir William Eden. This suit was instituted by Mrs. Wilson, one of the eight daughters, to establish the will of Peter Johnson, and for an account of the rents of the estates devised under his will, which had come to the hands of the defendant, Sir William Eden, and that the plaintiff's interest therein might be determined and paid to her, and the residue to the parties respectively entitled. Upon a case sent to the Court of Exchequer as to the plaintiff's title, judgment was given against her; but on another case to the Court of Queen's Bench it was in her favor.

Turner for the plaintiff; W. Ansell, Milnes, and Dumergue for the defendants.

The Master of the Rolls held, that the daughters were entitled to the estates under the limitation in the testator's will on the determination of the previous estates, and confirmed the opinion of the Court of Queen's Bench.

Vice-Chancellor of England.

Trust v. Duffell. March 2, 4, 5, 6, 1850.

WILL.—CONSTRUCTION.—"OR OTHERWISE HOWSOEVER."

Upon construction of a will bequeathing to testator's children all that he might be entitled to at his decease from the estate of R. B. in right of their late mother, "or otherwise howsoever," held, not to pass property which the testator had acquired by assignment of the incumbrances on the estate of his wife.

The testator, William Barnett, having an administrator to his wife, who was entitled to property under the will of Robert Brent, taken assignments of certain incumbrances on such property, bequeathed to his children "all that I may be entitled to at my decease from the estate of Robert Brent in right of their late mother, or otherwise howsoever."

Stuart, Lloyd, Rolt, Shaper, and Bigg, for the plaintiffs, contended that the assignments to the testator had become merged in the larger interest which he had acquired as administrator of his wife and jure mariti, and passed under the words "or otherwise howsoever."

Bethell, J. Parker, Malins, Rogers, Prior, J. Bailey, and Weightman, contra.

The Vice-Chancellor held, that the testator only intended to pass such property as he might be entitled to from the estate of Robert Brent after the date of the will, and not the interests he had taken under the assignments—costs to come out of the general estate.

In re Allen. March 8, 1850.

MAINTENANCE OF MINOR.—CHARGE OF PROPERTY UNDER 1 & 2 VICT. C. 110.

A petition was granted to charge property under the 1 & 2 Vict. c. 110, belonging to the widow and son of the testator, the rents and profits of which had been directed to be applied during his son's minority, for his maintenance and education, with payment of costs for the petition.

The petitioner, John Allen, devised certain property to his son and his heirs, and in default thereof to the testator's wife, Mrs. Elizabeth Allen, her heirs and assigns. Mrs. Allen was also directed to receive the rents and profits during the son's minority, for his maintenance and education, and on his attaining the age of 21 years she was to have an annuity of 50*l.*, which was charged on the property. The son being 19 years old, Mrs. Allen proposed to raise 150*l.* on her interest, and 350*l.* on her son's estate, for his education. This petition was therefore presented for an order to charge the estates with that sum, or such other as the Master on reference should approve of.

Neale in support, referred to the 1 & 2 Vict. c. 110, s. 13, which provides, that all decrees and orders in equity whereby any moneys are payable to any person, should have the effect of judgments at common law, and should operate as charges on all lands, &c., belonging to the person against whom judgment was entered, whether in possession, reversion, remainder or expectancy. The learned counsel also cited *Fentiman v. Fentiman*, 13 Sim. 171.

The Vice-Chancellor made the order as prayed.

Vice-Chancellor Knight Bruce.

Lord Tullamore v. Richards and others.

March 7, 1850.

ANNUITY DEED. — SETTING ASIDE. — PAYMENT OF ARREARS INTO COURT.

A bill to set aside an annuity deed on behalf of the eldest son of the grantor, and for an injunction to restrain the lenders from putting in force their security, was refused — the plaintiff declining to bring the arrears of the annuity into Court.

THIS was a motion for an injunction to restrain the defendants, the trustees of the General Reversionary and Investment Company, from selling or disposing of the plaintiff's interest in certain estates in Ireland. It appeared that the plaintiff was entitled to a reversionary interest in the Charleville estates, subject to his father, the Earl of Charleville's, life estate; and that in September, 1843, a few months after the plaintiff attained his majority, his father applied to him to join in executing certain deeds to enable him to raise a sum of money. The plaintiff accordingly, upon the express understanding he incurred no present liability and was to have some security, executed in December the deeds, and handed over a sum of 5,999*l.* received from the company to his father. In 1847, the plaintiff discovered that he had by the deeds charged an annuity of 470*l.* on his interest in the estates, and being unable to re-purchase the annuity, this suit was instituted to set aside the deeds and for an injunction.

Wigram and *Cotton*, in support, cited *Archer v. Hudson*, 7 Beav. 551.

Miles and *Bevan* contra.

The Vice-Chancellor, upon the plaintiff declining to pay into Court the arrears of the an-

nunity, refused the motion, without prejudice to any question.

Vice-Chancellor Stirling.

Bradbury v. Shaw. March 6, 7, 1850.

SPECIAL INJUNCTION. — JURISDICTION.

Where the common injunction in default of answer could have been obtained on the 8th March, to restrain proceedings in an action of ejectment, a special injunction was refused, although the commission-day was the 7th March.

THIS was a motion for a special injunction to restrain two of the defendants from proceeding in an action of ejectment against one of the plaintiffs in equity, and other persons not parties to the record, the alleged tenants of the premises in dispute. It appeared the action was commenced in January 26th, and the defendant, James Bradbury, was only on February 22nd admitted to plead at law and enter into the consent rule. On February 27, this bill was filed, an appearance entered for the defendant the same day, and notice of this motion given for March 1.

Lloyd and *W. H. Bennet* in support, on the ground that the commission-day for York was on 7th March, and the defendant was unable to get the common injunction in default of answer until the 8th, and also, that the action was against one of the plaintiffs only.

Elmsley and *Pemberton*, for the defendants, contended, that the time for answering not having expired it was irregular to proceed by special injunction.

The Vice-Chancellor held, that he had no jurisdiction, and dismissed the motion with costs.

Queen's Bench.

Thompson v. Ingham. Feb. 5, 26, 1850.

COUNTY COURT ACT. — TITLE TO LAND IN QUESTION. — PROHIBITION. — PRACTICE.

Where the judge of a County Court overruled the objection of the defendant in a plaint, that the title of the land was in question, held, that as no writ of error against such ruling was given under the 9 & 10 Vict. c. 45, the course was to apply for a prohibition on affidavits, or to declare in prohibition.

THIS was a declaration in prohibition by the defendant in a plaint in the Westmoreland County Court of *Battys v. Thompson*, against Mr. Ingham, the judge of the Court. It appeared from the defendant's plea, that the action was brought for use and occupation, and that upon the cause being called on, it was objected that the title to the land was in question, but the judge, after hearing both parties, overruled the objection, and proceeded to determine the point. To this plea the plaintiff demurred.

Martin and *Lusk* in support of the demurrer; *Watson* and *Pashley*, contra, referred to the 9 & 10 Vict. c. 95, s. 69, which enacts, that "The judge of the County Court shall neither

sole judge in all matters brought in the said Court, and shall determine all questions as well of fact as of law, unless a jury shall be summoned as hereinafter mentioned."

Cur. ad. vult.

The Court said, that as the plaintiff was to recover for use and occupation, the judge had *prima facie* jurisdiction, which was, however, determined upon the question of title appearing from the evidence to be in dispute. The power conferred by the 69th section was analogous to a plea to the jurisdiction, which was decided in the Court below, subject, however, to a writ of error. But the 9 & 10 Vict. c. 95, giving no writ of error, the course was to move on affidavits for a prohibition, or if it were so directed by the Court, to declare in prohibition. The judgment must therefore be for the plaintiff, and the prohibition issue.

Common Pleas.

Barnewall, (P. O.) v. Sutherland. Feb. 26, 1850.

BANKING CO-PARTNERSHIP.—DEATH OF PUBLIC OFFICER.—MATTER OF RECORD.

Held, that the death of the public officer of a bank before trial, but after issue joined, is matter of record, and where such alteration was only entered on the *Nisi Prius* Roll and notice given to the defendant, a rule for a new trial was made absolute.

A *rule nisi* had been granted on 5th November last, to set aside the verdict and for a new trial. The action was brought by a Mr. Taylor, as public officer of a bank; before the trial, but after issue joined, he died, and another public officer, Mr. Barnewall, was made plaintiff, the alteration being entered on the *Nisi Prius* roll, and notice given to the defendant. No entry had been made on the plea roll, nor a suggestion made to the Court, nor any new venire obtained.

Cur. ad. vult.

The Court said, that the 7 Geo. 4, c. 46, s. 9, which provided that the death of a public officer should not affect any suit then pending, did not enable the substitution of a new public officer without a proper entry on the record of such alteration, and made the rule absolute for a new trial.

Court of Exchequer.

Birkenhead, Lancashire, and Cheshire Junction Railway Company v. Pilcher. Feb. 25, 1850.

ACTION FOR CALLS.—PLEA OF INFANCY.—TIME OF CONTRACT.

Is an action to recover calls, to which the defendant pleaded infancy at the time of contract, it appeared the defendant purchased the shares in March, came of age in April, and that the call was made in May. The plea was held good.

THIS was an action to recover the amount of certain calls made in respect of shares in the above company which the defendant had purchased. The defendant pleaded, that at the time of entering into the contract under which the call was made he was an infant, to which the plaintiffs replied traversing such infancy. It appeared that the defendant purchased the shares on March 1st, and came of age the beginning of April, and that the call was made in May.

Cur. ad. vult.

The Court said, that the obligation on a shareholder to pay the amount of calls arose out of the contract entered into at the time of acquiring the shares by purchase or otherwise, and that the shareholder entered into no fresh contract with the company on the making a call. The defendant, therefore, was under age when he contracted with the plaintiffs, and was entitled to judgment.

BUSINESS OF THE COURTS.

CHANCERY SITTINGS.

AT WESTMINSTER.

Lord Chancellor.

Easter Term, 1850.

Monday	April 15	Appeal Motions & Appeals.
Tuesday	16	} Appeals.
Wednesday	17	
Thursday	18	
Friday	19	{ (Petition-day) Petitions and Appeals.
Saturday	20	} Appeals.
Monday	21	
Tuesday	22	
Wednesday	23	
Thursday	24	Appeal Motions & Appeals.
Friday	25	{ (Petition-day), unopposed Petitions and Appeals.

Saturday	27	} Appeals.
Monday	29	
Tuesday	30	
Wednesday	May 1	} Appeal Motions & Appeals.
Thursday	2	
Friday	3	{ (Petition-day) unopposed Petitions and Appeals.
Saturday	4	} Appeals.
Monday	6	
Tuesday	7	
Wednesday	8	Appeal Motions & Appeals.

N. B.—The days his Lordship hears appeals in the House of Lords excepted.

Vice-Chancellor of England.

Monday	April 15	Motions.
Tuesday	16	} Pleas, Demurrers, Exceptions, Causes, and Final Directions.
Wednesday	17	
Thursday	18	

Friday	19	(Petition-day, Petitions (unopposed first), Short Causes and Causes.
Saturday	20	
Monday	22	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	23	
Wednesday	24	Motions.
Thursday	25	(Petition-day, Petitions, (unopposed first), Short Causes, and Causes.
Friday	26	
Saturday	27	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	29	
Tuesday	30	Motions.
Wednesday	May 1	(Petition-day, Petitions, (unopposed first), Short Causes and Causes.
Thursday	2	
Friday	3	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	4	
Monday	5	Motions.
Tuesday	6	
Wednesday	7	
Thursday	8	

Vice-Chancellor Knight Bruce.

Monday	April 15	Motions.
Tuesday	16	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	17	Bankrupt Petitions and Ditto.
Thursday	18	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	19	
Saturday	20	Short Causes, Petitions and Ditto.
Monday	22	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	23	
Wednesday	24	Bankrupt Petitions and Ditto.
Thursday	25	Motions.
Friday	26	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	27	Short Causes, Petitions and Ditto.
Monday	29	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	30	
Wednesday	May 1	Bankrupt Petitions and Ditto.
Thursday	2	Motions.
Friday	3	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	4	Short Causes, Petitions and Ditto.
Monday	5	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	6	
Wednesday	7	Motions.
Thursday	8	

Monday	April 15	Motions and Causes.
Tuesday	16	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday	17	
Thursday	18	Short Causes, Petitions and Ditto.
Friday	19	
Saturday	20	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Monday	22	
Tuesday	23	Motions and Ditto.
Wednesday	24	
Thursday	25	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Friday	26	
Saturday	27	Short Causes, Petitions and Ditto.
Monday	29	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	30	
Wednesday	May 1	Motions and Ditto.
Thursday	2	
Friday	3	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Saturday	4	Short Causes, Petitions and Ditto.
Monday	5	Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	6	
Wednesday	7	Motions and Ditto.
Thursday	8	

COMMON LAW CAUSE LISTS.

Queen's Bench.

NEW CASES.

Easter Term, 1844.

Remaining undetermined at the end of the sitting after Hilary Term, 1844.

Kent.—Doe d. Warren and another v. Bridges, tenant.—Sir F. Thesiger.

(Stands over till after Easter Term.)

Hilary Term, 1844.

Middlesex.—The Queen v. Smith.—Sir E. Thorpe.

(Stands for arrangement.)

Middlesex.—Same v. Same.—Sir E. Thorpe.

(Stands for arrangement.)

Easter Term, 1844.

Middlesex.—Margaret v. Wright.—Gibson.

Middlesex.—Doe d. Mortimer v. Thomas.

Glover.—Chambers.

Middlesex.—Robins v. Kipp.—Gibson.

London.—Hartley v. Denny.—Gibson.

London.—Chambers v. Smith, Esq.—Thorpe.

Borough of Sheen.

London.—R. v. Wall.—P. v. L. v. W. v. H. v. W. v. W.

Devon.—Doe d. another v. Gibson.—Thorpe.

Devon.—Doe d. another v. Same.—Thorpe.

Devon.—Mayhew v. Same.—Thorpe.

Devon.—Hobbs v. Gibson.—Thorpe.

Cornwall.—Doe d. Stevens v. Gibson.—Thorpe.

Northampton.—Doe d. Hubbard v. Hubbard.

Whitehurst.

Lincoln.—Allison v. Draper—Same.
 Lincoln.—~~Wright v. Bates and others~~—Same.
 Lincoln.—~~Smith v. Smith and Humphrey~~.
 Warwick.—Edwards v. Knowles—Whitehurst.
 Warwick.—~~Edwards v. Thibault~~—Worlidge.
 Warwick.—~~Humphries v. Brogden, secretary, &c.~~
 Warwick.—~~Knowles v. Brogden~~.
 York.—Livingstone, surviving partner, &c. v. ~~Walling~~—Pashley.
 York.—~~Doe & Davonish v. Moffatt~~—Chambers.
 York.—~~Leary v. Patrick and another~~—Same.
 York.—~~Moran v. Hume~~—Serjeant Shee.
 York.—~~Gates v. Gordon~~—Hawkins.
 Surrey.—~~Dimes v. Poley~~—Serjeant Shee.
 Worcester.—Phillipotts and others v. Evans and another—Serjeant Talfourd.
 Stafford.—Banks v. Baldwin—Same.
 Stafford.—~~Doe d. Sayer and others v. Hutton~~—Gedson.
 Salop.—~~Griffith v. Murey~~—Serjeant Talfourd.
 Monmouth.—~~Williams and others v. James~~—Same.

Term during Trinity Term, 1849.
 Middlesex.—~~Pige v. More~~—Chambers.
 Middlesex.—~~Johnson v. Clarke~~—Serjeant Shee.
 Middlesex.—~~Gordon v. Poock~~—Humphrey.
Michaelmas Term, 1849.
 Middlesex.—~~Chard v. Fox~~—Gurley.
 Middlesex.—~~Duke of Brunswick v. Harmer~~—Sir F. Theisiger.
 Middlesex.—~~Moorwood and another v. Steers~~, Esq.—W. H. Watson.
 Middlesex.—~~The Queen v. Walker~~—Serjeant Williams.
 Middlesex.—~~The Queen v. Cutis~~—Attorney-General.
 Middlesex.—~~Farnham v. Thorne~~—Humphrey.
 Middlesex.—~~Malpas v. Clements~~—Same.
 Middlesex.—~~Thompson and others v. White~~—H. Walker—Alexander.
 Middlesex.—~~Jones v. Jones~~—Wilde.
 London.—~~Job v. Job~~—Macaulay.
 London.—~~Cooper v. Blount~~—W. H. Watson.
 London.—~~Hopkins v. Knowles~~—Same.
 York.—~~Chapman and others v. Harris~~—Knowles.
 York.—~~The Queen v. Inhabitants of Lordsmere~~—Hall.
 York.—~~Doe d. Witty and others v. Carr~~—Pashley.
 York.—~~Stanger v. Bree~~—Knowles.
 York.—~~Harland v. Binks~~—W. H. Watson.
 Liverpool.—~~Doe d. Francis v. Andrews~~—Martin.
 Liverpool.—~~Mallalieu v. Hodgson and another~~—Knowles.
 Norfolk.—~~Field v. Tatham and another~~—O'Malley.
 Here.—~~Austin v. Spier, exor, &c.~~—Chambers.
 Essex.—~~Walker v. Risk~~—Chambers.
 Kent.—~~Williams v. Lord~~—Barnford—Chambers.
 Kent.—~~Beecroft v. Russell~~—Chambers.
 Surrey.—~~Malleson v. Hollis~~—Hawkins.
 Surrey.—~~Hartfield, clerk, v. Curtis~~—E. James.
 Surrey.—~~Doe d. Constable v. Stevenson~~—Pacock.
 Devon.—~~Whalley v. Besswell~~—Walley.
 Devon.—~~Bentley v. Stiles~~—Cockburn.
 Cornwall.—~~Tysack and others v. Richards~~—Crowder.
 Cornwall.—~~Same v. Same~~—Cockburn.
 Somerset.—~~Doe d. Biddulph and others v. Hild~~ and others—Cockburn.
 Somerset.—~~Mellish, an infant, v. Collins~~—Crowder.
 Dorset.—~~Doe d. Sedell~~—Barnford.

Stafford.—Smith v. Archibald and another—Knowles.
 Brecon.—Williams v. Morgan, in replr.—Evans.
 Tried during Michaelmas Term, 1849.
 Middlesex.—~~Heath v. Bentinger~~—W. H. Watson.
 Hilary Term, 1850.
 Middlesex.—~~Trails and another v. Grey and others~~—Serjeant Shee for defendant Wright.
 Middlesex.—~~Blanchard v. Ripley and another~~—Knowles.
 Middlesex.—~~Lloyd v. Howard~~—Serjeant Shee.
 Middlesex.—~~Walton v. Gavin~~—Chambers.
 London.—~~Galvanized Iron Company v. Ogier~~—Crowder.
 London.—~~Baker v. Goddard~~—Same.
 London.—~~Campbell v. Howlett~~—Sir F. Theisiger.
 London.—~~Miller v. Alexander~~—W. H. Watson.
 Tried during Hilary Term, 1850.
 Middlesex.—~~Hay v. Ayling~~—W. H. Watson.

ENLARGED RULES.

First Day.

Lawrence v. Hughes.
 Bankin v. Hamilton.
 In the matter of The Leeds and Thirsk Railway Company and others.
 In the matter of the Westminster Improvement Commissioners, &c., for Bail Court.
 Bailly and another v. Bracebridge.
 Bailly and another v. Haines.
 Dean and Chapter of Christ Church, Oxford, v. Hicks, for Bail Court.
 The Queen v. Edward Wallner and another.
 The Queen v. James Rawlins.
 The Queen v. Treasurer of Worcestershire.

Second Day.

Threlfall, Esq., v. Fanehawe, for Bail Court.
 De Rutzen and wife v. Farr.
 Hanbury v. Dampier, for Bail Court.
 In re Edmund Garbett, Gent., one &c.
 Johnson v. Latham, for Bail Court.
 Williams v. Russell, for Bail Court.
 Candwall v. Mostyn and others, for Bail Court.
 Wilson v. De Zulueta, for Bail Court.
 The Queen v. H. L. Trafford, Esq., and another, Justices.
 The Queen v. John Egginton and another, Justices, for Bail Court.
 The Queen v. Thomas Fairbank and another, Justices, for Bail Court.
 The Queen v. The Justices of the West Riding, for Bail Court.

Fourth Day.

Dawson v. O'Brien.

SPECIAL CASES AND DEMURRERS.

White and Co.—Cook v. Field, dem.
 Cox and S.—Knight and others v. Faith and another, special case.
 Chaplin.—Toller v. Allwood, special case.
 Gill.—Meyer and another v. Cockburn, dem.
 Sergeant.—Morris v. Walker, dem.
 Same.—Bennett and others v. Batten and others, dem.
 Wathen and P.—Barnes and another v. Keane, dem.
 Tihon and Co.—West Cornwall Railway Company v. Mowatt, special verdict.
 Pittendreich.—Stanton and another v. Wood and others, dem.

Berkart.—*Passenger v. Measum*, dem.
Clarke.—*Pollett (a pauper) v. Chesterton*, dem.
Oliveron & Co.—*The Queen v. Bishop of Exeter*, dem.
Webb.—*Boyce v. Webb*, dem.
Lyle.—*Simpson v. Simpson*, dem.
Williamson.—*Sanderson and another v. Dobson and others*, special case.
Wiglesworth and Co.—*Hutchinson v. North-Western Railway Company*, dem.
Sharpe and Co.—*Holmes and another v. Bromfield*, dem.
Pemberton.—*Chabot v. Lord Morpeth and others*, dem.
Watson.—*Blackford v. Hill*, dem.
Jacques and Co.—*Burley, surviving executor, &c., v. Dobson*, dem.
Guillaume.—*Forster v. Hoggart and another*, special case.
Parkinson.—*Keyse v. Powell*, dem.
Blower and Co.—*Rose v. Dry and another*, in replevin, special case.
Bower and Co.—*Parke v. Smith*, dem.
Whitaker.—*Davies v. Cary*, dem.
Wilson.—*Railton v. The York, Newcastle, and Berwick Railway Company*, dem.
Rogers.—*Wagstaffe v. Booth*, administrator, dem.
James.—*Berry v. Huxtable and another*, dem.
Maples and Co.—*Gallard v. Gilchrist*, dem.
Roberts.—*Scattergood v. Sylvester*, special case.
May and S.—*Reynell and another v. Lane*, dem.
Trinder & E.—*Daniel v. Morton*, special case.
Tilson & Co.—*Walsh and another v. Treravision and wife and others*, special case.
Lever.—*Bainbridge v. Wade*, dem.
Pinniger.—*Pim v. Wilson*, dem.
Johnson and Co.—*Doe d. Blgrave v. Stephens and another*, special verdict.
Few and Co.—*North American Colonial Association of Ireland v. Bentley*, dem.
Hawkins and Co.—*Hayward v. Albony*, dem.
Justice.—*Day v. Smith*, dem.
Brookfield.—*Walker v. Clements*, dem.
Powell and T.—*Thomson and another, surviving executors, v. Whately*, special case.
Bircham and Co.—*Jackson and others v. Charing Cross Bridge Company*, special case.
Gosling and L.—*Longbourne and another v. Chadwick*, dem.
Oliver and W.—*Doe several dems. of Evers and wife and others v. Challis*, special verdict.
Robinson and H.—*Marsden and another, trustees, &c. v. McLean*, dem.
Hawkins and Co.—*Rochdale Canal Company v. Walmaley*, dem.
Hawkins and Co.—*Walton v. Holt*, special case from Chancery.
Richardson and T.—*Evans, clk., v. George, clk.*, dem.
Tattershall.—*Mudford v. Lowe and others*, dem.
Lawrence and Co.—*Trotter v. York and Newcastle and Berwick Railway Company*, dem.

Common Pleas.

Demurrers for Easter Term, 1850.

Friday, April 19. Special arguments.

Kepp and another v. Wiggitt and others.

Levy v. Moylan, Esq., and others.

Hutton v. Seyler.

Mayor, &c., of London, v. Parkinson and others.

Lomas v. Bradshaw.

Page and others v. Newmarch.

Oallander v. Howard.

Hallett and another v. Wigram and others.

Whitehouse v. Owen.

Wetherell v. Julius and another.

Cumfife and another v. Makant.

Anderson and others, assignees, v. Arnold.

Bank of Australasia v. Harding.

Sherrard v. Leifchild.

Ferguson v. Elder.

The Dean of Christchurch, Oxford, v. H.M.

Wednesday, April 24 Special arguments.

Friday 26 Ditto.

Wednesday May 1 Ditto.

REMANET PAPER FOR EASTER TERM, 1850.

Enlarged Rules.

To 1st day.—*Clark v. Smith.*

" " *Kynaston and another, assignees v. Parker.*

" " *Same v. Raikes and others.*

New Trials of Michaelmas Term, 1848.

Surrey, Hamilton v. Cockrane.

New Trials of Michaelmas Term last.

London, Smith v. Hamilton, Treasurer, &c.

New Trial of Hilary Term last.

Middlesex, Leader and others v. Strange.

Middlesex, White v. Jolly.

Middlesex, Doe dem. Young v. Warren.

Middlesex, Burrell v. Ball.

London, Rawll v. Benett.

London, Hilcoat v. The Archbishops of Canterbury and York.

London, Same v. Same.

CUR. AD. VULT.

Somerville v. Hawkins.

Jones and another v. Broadhurst.

Newton, Esq., v. John Chaplin.

* * See the last No. p. 451, for the Exchequer Cause List.

Queen's Bench.—Crown Paper.

Easter Term, 1850.—(13th Viet.)

Cumberland.—*The Queen v. Maryport and Carlisle Railway Company.*

Cumberland.—*The Queen v. The Caledonian Railway Company.*

Carlisle.—*The Queen v. George Dixon.*

Notts.—*The Queen v. The Inhabitants of Winstar.*

Salop.—*The Queen v. The Inhabitants of Madeley.*

Middlesex.—*The Queen v. Francis Whitmarsh.*

London.—*Esq. Registrar of J. S. Companies,*

pros. of N. Land Company.

Notts.—*The Queen v. Midland Railway Company.*

Lichfield.—*The Queen v. Council of Lichfield, pros. of Charles Simpson.*

Lincolnshire.—*The Queen v. The Great Northern Railway Company.*

Kent.—*The Queen v. The South Eastern Railway Company.*

Yorkshire.—*The Queen v. Edmund Godfrey and others, (participants of Hatfield Chase). Pros. 9th Oct. 1847.*

Yorkshire.—*The Queen v. Same, 14th April, 1849.*

Middlesex.—*The Queen v. The Inhabitants of St. Marylebone.*

West Riding, Yorkshire.—*The Queen v. The Clerk of the Peace for the West Riding.*

The Legal Observer,

DIGEST, AND, JOURNAL OF JURISPRUDENCE.

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SATURDAY, APRIL 20, 1850.  
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DEBATE ON THE EXTENSION OF THE COUNTY COURT JURISDICTION.

THE result of the division in the House of Commons on the motion for the second reading of the bill, increasing the jurisdiction of the County Courts to 50*l.*, which was hastily adverted to in our last publication, appears to have excited more surprise than is justified by the circumstances under which it took place. Active and well-concerted measures were perseveringly taken to obtain support for the measure, whilst those who were hostile to it slept in security under the impression that a bill of this nature could not become law, in defiance of the determined opposition of the Secretary of State for the Home Department, and the First Law Officers of the Crown. The objections to the measure were fairly and candidly stated on the part of the government, by Sir George Grey and Sir John Jervis, but a glance at the division list will show that the majority consisted chiefly of gentlemen who usually vote with ministers, from which it may be inferred that no very strenuous efforts were previously taken to produce a different result.

It is not meant to insinuate, that any blame attaches to those in office for neglecting to canvass for votes in opposition to such a measure. They probably considered themselves as having sufficiently discharged their duty to the public, by solemnly warning the house against assenting to a proposition which, if carried into practical operation, could not fail to shake the confidence of the community in the administration of justice.

The effect of the large majority in support of the bill undoubtedly has been to encourage the notion, that the County Court

system is popular throughout the country, which, so far as we have been enabled to acquire information, is as unfounded a fallacy as ever obtained currency. Extensive inquiries amongst shopkeepers, artisans, and working-men in different parts of the kingdom, satisfy us that the County Courts are not popular with any of those classes, and that the desire to transfer to those tribunals the adjudication of causes now falling within the jurisdiction of the Superior Courts, is confined to a very limited though a very zealous and active body of persons, who have not been nor do not expect to be suitors, but are, nevertheless, clearly interested in upholding and extending a system under which they flourish.

Beyond the unfounded assumption, that the New Courts have given universal satisfaction, after an attentive perusal of the debate, we can find no argument in favour of extending their jurisdiction, but that derived from the circumstance that the expense attendant upon proceedings in the Superior Courts, practically renders it inexpedient to resort to those tribunals when the subject-matter of litigation does not exceed 50*l.* This argument, in a variety of forms, and with greater or lesser cogency and accuracy, will be found embodied in every speech addressed to the House of Commons in support of the bill.

It is to be regretted that those who concur with us in thinking the proposed extension of jurisdiction most mischievous and impolitic, were nevertheless not in a position to meet the allegation as to the expenses consequent upon proceedings in the Superior Courts with a denial. Upon this subject many exaggerated statements were ventilated. One hon. member asserted that it was a *common practice* with tradesmen in country towns who had debts of 40*l.* or 50*l.* owing to them, to sue in the County Court

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for 20l. and abandon the excess, rather than incur the expense of an action in one of the Superior Courts. Another quoted the dictum of a city banker, fortunately without mentioning his name, that if unjustly sued for 500l., he should pay the amount rather than incur the expense of defending himself against an unfounded claim. Still, with all this absurdity and exaggeration, the fact was necessarily admitted that the expenses of proceedings in the Superior Courts were excessive, and rendered it inexpedient to resort to those tribunals for the recovery of small debts.

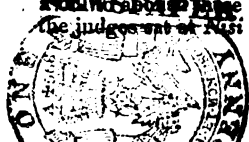
The remedy for such a state of things manifestly is to reduce the costs of proceedings in the Superior Courts. This was strongly and ably put by Mr. Martin, who is reported to have made some statements relating to Court fees of rather a startling character. As a member unconnected with the government, having an extensive and lengthened practical experience, and ample opportunities for obtaining correct information, the views and opinions of the hon. and learned member for Pontefract upon this matter seem peculiarly deserving of attention, and render any apology for inserting the following extract from his speech unnecessary:—

"It might be supposed that he (Mr. Martin) was speaking in behalf of his own interest, but he could assure the house that the best thing that could be done for lawyers was to pass measures similar to that under consideration. It was for the interest of the public that the law should be administered by competent judges in the face of an intelligent and respectable Bar. (Hear.) Under that system we had acquired a code of law superior to any that ever existed. Far, however, be it from him to say that the administration of law in the Superior Courts could not be much amended. It had long been his wish to see measures adopted for reducing expense, but he was satisfied that the task of introducing and carrying through those measures could be executed only by the government. An enormous expense was incurred at judges' chambers. No fees were taken at judges' chambers when the circuits were not going on, but the moment they commenced the judges' clerks exacted enormous fees. It was known that in one circuit a judge's clerk received no less a sum than 2,000l. in fees. The legislature had provided the judges' clerks with a salary of 500l. each, which was a great deal more than they ever obtained whilst their masters were at the Bar; and they ought not to be allowed to exact fees. (Hear, hear.) The Attorney-General would confer a great benefit on suitors by bringing in a bill to abolish these fees. The fees paid when the judges sat at *Nisi Prius* were another item

of expense. Recently 5l. was paid in fees for an undefended cause which did not occupy one minute. (Hear, hear.) Why not abolish all these fees and pay responsible officers for executing the necessary duties? (Hear, hear.) For his part, he saw no reason why undefended causes might not be disposed of by a judge's order, without being carried into court at all. If the Attorney-General would bring in and pass a bill to remedy the abuses to which he had adverted, the administration of English law would be as superior in point of economy as it was in other respects to that of foreign nations."

We have reason to believe there is some inaccuracy in the report of what fell from Mr. Martin with respect to the fees taken at the Judges' Chambers during the Circuits and at other periods; but the whole profession concur with him in thinking that the fees payable at the Judges' Chambers, and also those payable at *Nisi Prius* and known as Court fees, should be at once abolished. Other enormous and equally indefensible charges upon the suitors in the Superior Courts might be got rid of without abridging the emoluments of any officers who have public duties to perform. That reductions are practicable, which would bring down the expense of proceedings in the Superior Courts to a moderate scale without impairing the efficiency of the machinery now existing in connection with those Courts, no one who has considered the subject can entertain any doubt.

The question now is, whether the principle of County Court extension having been affirmed by a large majority of the House of Commons, the government will not feel itself justified in refraining from offering further opposition to the measure, leaving the responsibility upon those who insist upon its expediency? In ordinary cases it may be conceded that such a course would be justifiable, but as the government is especially charged with superintending the administration of the law, and have declared—through their responsible organs in the house—that the experiment now under consideration is one of the most dangerous character, objectionable in principle and full of imperfections in matters of detail, we cannot conceive they can consider it consistent with public duty to sit in silence and suffer a bill of such magnitude and character to become law. If the business of the Common Law Courts is to be transferred to the County Courts, the former should be swept away, as no ministry will be justified in calling upon the country to continue to maintain such expensive tribunals after they have ceased to be



useful. Instead of making provision for elevated judicial officers, the duty of the government will then be to prepare for their abolition. The measure now before parliament must be regarded therefore as only the first of a series.

The least objectionable course would be for the executive to introduce without delay a bill correcting the admitted imperfections of the Superior Courts of Common Law, rendering them accessible to suitors at a moderate expense, and determinedly to resist any further alterations in the system of procedure, until the success of their new measure was fairly tried. If the public had an assurance that such a course was about to be adopted, the proposal to extend the jurisdiction of the County Courts would find little support within or without the walls of parliament.

REASONS AGAINST THE BILL.

THAT the existing County Courts Act of 1846, (9 & 10 Vict. c. 95,) was expressly passed, and is so intituled, "for the more Easy Recovery of *Small Debts and Demands in England*:" and that the jurisdiction of the Courts thereby established was limited to debts and demands not exceeding 20*l*.

That such Courts were substituted for the several County Courts and Courts of Request, the jurisdiction in most of which was limited to 2*l*. or 5*l*.

That by the Law Amendment Act of 1833, (3 & 4 W. 4, c. 42,) the Superior Courts were authorized, in actions for sums not exceeding 20*l*., to direct issues to be tried before the sheriff, instead of the Courts of Nisi Prius or at the assizes.

That before the abolition of arrest on mesne process, a plaintiff might, and, where the defendant is about to leave the country, still may, hold him to bail on a debt amounting to 20*l*.; and the judges have also fixed the sum of 20*l*. as the amount in dispute for which they will order a new trial, if sufficient grounds are shown.

It thus appears, both from statutory enactments and judicial regulations of recent date, that the legislature and the Superior Courts have fixed 20*l*. as the limit of small debts, and that for sums of greater amount, the suitors ought to retain the unrestricted right to have their claims tried before the judges of the Courts at Westminster.

That the principle of the existing County Courts Act will be altogether subverted, if the jurisdiction should be extended to demands of so high an amount as 50*l*.

That, on account of the large increase which would take place in the number of causes to be decided, and the greater importance and difficulty of the matters involved in them, the Courts would no longer be what they have been called, "*the Poor Man's Courts*," established in the place of the old 40*s*. County Courts, or 5*l*. Courts of Conscience, but they will become Courts of a different and higher character, requiring judges of great experience and ability, at salaries proportionably increased, and rendering the employment of professional advisers absolutely necessary.

That so important a change in the mode of administering the law of this country must necessarily occasion a large increase in the establishment of additional judges and officers, at an enormous expense,—while the expected benefit to the community is at least doubtful, and the experiment would certainly have an injurious effect upon the Superior Courts of Westminster Hall; and, by withdrawing from them a great number of important cases, damage the efficiency of tribunals to which the subject has hitherto been entitled to resort, and upon which he had long relied for the security of property and the satisfactory decision of his claims.

That in regard to small debts, which are commonly undisputed, and where for the most part the only question before the Court is the time at which payment should be made, by instalment or otherwise, the rules and principles of law are seldom brought into question; whereas the extension of the jurisdiction of the Court to 50*l*. will involve many important points, hitherto requiring the decision of the Superior Courts. That there will necessarily arise a want of uniformity in the decisions of the sixty local judges, travelling their respective circuits in all parts of the kingdom, which will create general dissatisfaction, and go far to deprive the Courts of that respect and efficiency which they might possess if confined to smaller causes.

That considering the increase of the proper business of the County Courts, which may be expected to arise when the improvements shall be effected in the practice now under consideration by the Commissioners appointed by the Lord Chancellor; and considering, moreover, the great extent of additional business proposed to be confided to the judges of the County Courts, under the Charitable Trusts Bill, they will be unable, even if competent in other respects, to hear and satisfactorily decide the

causes from 20*l.* to 50*l.*, proposed to be transferred from the Superior Courts.

That in the conduct and management of many actions at law, it is necessary to attend the judge on matters of pleading, practice, and evidence, in order to bring the true points in question distinctly before the Court, and save the expense of unnecessary proof, and that from the facility of communication between the metropolis and every part of the country, it will be cheaper, and more expeditious, to conduct the proceedings previous to trial in London, where one of the judges constantly sits at chambers, than by following the local judges, often by cross roads, from town to town throughout an extensive circuit, which would necessarily follow the increase of the jurisdiction.

That though a power of appeal is given by the 12th section, in cases above 20*l.*, yet it cannot be exercised without the consent of the judge whose decision is questioned, and it is moreover clogged with the condition of paying the money into Court, and giving security to prosecute the appeal and to pay the costs, if the judgment shall not be reversed; and these terms will render the power of appeal merely nominal and worthless;—the poorer class of suitors will not be benefited by it, whilst it will afford to the rich an opportunity of oppression. The admission in the bill of the right of appeal to the Superior Courts in cases above 20*l.*, in effect establishes the principle that such cases ought not to be brought within the jurisdiction of the Small Debt Courts.

That the repeal of the concurrent jurisdiction of the Superior Courts, where the plaintiff resides more than 20 miles from the defendant, will be very injurious. That in the Superior Courts, the business being conducted by their own attorneys, the parties are saved the loss of time, inconvenience, and interruption of business, occasioned by the necessity of a personal attendance in the County Court, (for which claimants receive no remuneration,) and on account of which loss and inconvenience they are often compelled to abandon just, or submit to unjust, claims.

That an easy and practical mode exists of lessening the expense of suits, and yet of preserving to the suitor the important advantage of having his rights determined by the learning and ability of the superior judges. A great source of expense attending proceedings in the Superior Courts is the fees payable to the officers of those Courts. By the abolition of such fees in actions not exceeding 50*l.*, (and which will

necessarily be wholly lost if these proceedings be transferred to the County Courts,) it will be practicable, by due alterations in the pleadings and mode of procedure, to conduct the actions therein nearly as cheaply and expeditiously as in the County Courts.

That under all these circumstances, and considering that the existing County Courts have not been in operation for more than three years, and that, therefore, the experiment even of *their* utility has not been sufficiently tried—that the efficiency of the Bar attending the Superior Courts would be prejudicially affected by the change, and the Courts themselves, consequently, lowered in public estimation—it is not consistent with the interest of the suitor or the satisfactory administration of justice, that the jurisdiction should be increased.—*From the Petition of the Incorporated Law Society.*

We have received the following letter from a correspondent on this subject:—

"I am one of those who admit the advantages hitherto derived by the public from the establishment of County Courts, but I object to the project for extending their jurisdiction, from a conviction that all the benefit at present enjoyed from that measure by the class for which it was designed,—viz., those having debts owing to them not exceeding 20*l.*,—will be entirely taken away by the proposed extension.

"As these Courts are now constituted, justice is satisfactorily administered and by a speedy and inexpensive procedure. And why? Principally because the matters investigated are seldom of intricate detail,—numerous witnesses are rarely examined in a case,—solicitors or barristers are seldom employed, and juries are very rarely summoned to try the issue between the parties.

"Now, raise the jurisdiction to 50*l.*, and see immediately what will be the result. The number of causes entered is tripled or quadrupled, and from this cause and the time the Court will now be occupied in the hearing of causes for sums above 20*l.*, an arrear of business will ensue, which, when a plaint is entered, will only admit of a distant day being appointed for the hearing. In the new class of cases with which the Court will now be deluged, solicitors or barristers must be regularly employed, speeches made, witnesses cross-examined *ad nauseam*, and juries summoned to take part in the performance. The Court will be occupied for perhaps two or three days with a running-down case and conflicting evidence, or with an action of slander with a justification pleaded as a defence,—or, may be, a day or half a day only with an action of assault and battery, or to recover a disputed balance of account running over a long period of time and involving numerous proofs.

"Whilst this is going on *within*, the plaintiffs

and defendants in the cases not exceeding 20l. will be promenading with their witnesses in the outer office of the Court, losing their time (which is their money) and their temper, and, I doubt not, venting some severe reflections on our legislators for not having let alone the measure designed for the unfortunates referred to, and which suited their object, but which, since the extension of the jurisdiction, will be no longer a measure "for facilitating the more speedy recovery of *Small Debts*."

A LOOKER ON.

MR. JUSTICE TALFOURD AND THE WESTERN CIRCUIT.

It having been erroneously stated, that an address signed by the members of the Western Circuit was presented to Mr. Justice Talfourd at Taunton, in reference to the newspaper attacks made upon him, arising out of the trial of the Birds, for the murder of Mary Ann Parsons, we have been requested to state that no such address was in fact presented. As observed by Mr. Justice Patteson in a late case, "the Judges of the Superior Courts stand upon their general character," and, strong in the rectitude of their intentions, can afford to disregard attacks such as those to which Mr. Justice Talfourd has been recently so unjustly subjected.

TECHNICAL OBJECTIONS RESTRAINING BILL.

THE Attorney-General has introduced a bill, which is entitled "a Bill to restrain Technical Objections in the Superior Courts of Law at Westminster." It consists of eight clauses, which we subjoin without abbreviation. The alterations suggested are certainly not of a very important character; with a single exception, they are too minute and of too little general importance to justify us in occupying space in discussing their expediency. The provision that a party whose pleading is demurred to shall have liberty to amend without payment of costs may probably render special demurrers somewhat less frequent, but every pleader knows that special demurrers are more frequently resorted to for the purpose of gaining time than of obtaining costs. The chief advantage is, that the evil day—i. e., the day of judgment—is postponed. The Attorney-General's Bill will not diminish the number of special demurrers framed for the purpose of delaying and postponing the trial. In this respect, therefore, it can hardly be considered as an effectual alteration of the law. The power

given by the 6th clause to put in issue material facts either by separate replications or by a general denial, however desirable in some respects, cannot fail to increase the number of issues, and thereby augment the expenses of trial, which it is already admitted are exorbitant.

If the alterations contained in this bill comprehend the whole of the improvements contemplated in the system of pleading and practice of the Superior Courts of Law, it cannot be expected that the objections urged against their course of procedure will be in any material degree diminished. A measure so little adapted to the emergency cannot fail to produce universal disappointment.

The clauses are as follow:—

"1. That no judgment shall be arrested after trial, except upon payment by the defendant of the costs of the trial.

"2. That no judgment *non obstante veredicto* shall be entered, except upon payment by the plaintiff of the costs of the trial.

"3. That no judgment shall be arrested or reversed by reason of misjoinder of causes of action or of a variance between the writ and count.

"4. That upon the delivery of any special demurrer the party whose pleading is demurred to shall be at liberty to amend, without payment of costs (and shall have the same time to amend that he had to plead); provided that a judge upon summons may (if he thinks fit) order costs to be paid upon amendment.

"5. That on joinder in demurrer, the judgment of the Court in which the action is brought shall be final upon all matters objectionable only upon special demurrer.

"6. That in every replication, rejoinder, or subsequent pleading, it shall be allowable to the plaintiff or defendant respectively to deny all or any of the material facts in the plea, replication, or other pleading respectively of the other party, either by separate replications, rejoinders, or other pleading, or by a general denial of the truth of the material facts in the plea, replication, rejoinder, or other pleading.

"7. That several replications may be pleaded to a plea of set-off or mutual credit.

"8. That no writ of summons in an action of trespass, or trespass on the case, shall hereafter be issued, but that, in lieu of such writs, writs of summons in an action of tort shall be issued; and any cause of action which might heretofore be prosecuted in trespass, or trespass on the case, may be prosecuted upon such writ of summons in an action of tort; and causes of action, whether sounding in trespass, or trespass on the case, according to the law existing at the time of the passing of this act, may be prosecuted under one and the same writ; provided that nothing herein contained shall alter or apply to the form of writ in an action on promises."

REMARKS ON THE COPYHOLD BILL.

In order to understand the provisions of the new bill, it should be borne in mind that, by the previous enactments, no provision was made for compulsory enfranchisement nor for compulsory commutation, except where an agreement was made by three-fourths in number and interest as to Tenants, and three-fourths in interest as to Lords, at a meeting held under the first act, (4 & 5 Vict. c. 35);—in which cases the commutation was made compulsory on the remaining fourth of the lords and tenants.

The present bill enables any tenant to obtain, by application to the Commissioners, a compulsory commutation of his copyholds, and also professes to allow the lord to obtain a compulsory commutation from a tenant; but the restrictions against his so doing will practically operate to prevent the lord from ever availing himself of the powers nominally given.

The bill also provides for manorial enfranchisements by agreement of three-fourths of the tenants and lords, in like manner as is provided in the first Copyhold Act with respect to commutations.

It also withdraws the very strange restriction against commuting at fines or rent-charges fixed in money, or enfranchising at rent-charges fixed in money,—a restriction which has hitherto rendered the provisions of the Copyhold Acts nugatory as to commutations, and very greatly restricted their operation as to enfranchisements.

Provisions are also made for fixing scales of stewards' fees, and subjecting stewards' bills of fees to taxation, whether the stewards be or be not attorneys.

Various provisions are made as to redemption of rent-charges and payment and apportionment of consideration monies; and power is given to the copyholders, after commutation, to pull down buildings and to demise the copyholds without licence, the lord's right to seize for want of a tenant being retained.

The parts of the bill requiring most consideration and most open to objection are sections 2, 3, and 4, giving the tenants power to enforce commutation, and professing to give, but really not giving, to the lords the same power.

By section 2, on application by the tenant to the Commissioners, they may, *in such way as they think proper*, inquire into, ascertain, and fix the value of the rights to be commuted, and the *nature and amount* of the consideration.

Under this power, the Commissioners may substitute for the fines a sum of money, a rent-charge, or both, or any of the other considerations mentioned in the several acts; and may not only interfere very injuriously with the arrangements under settlements and mortgages, by causing payments to be made at different times than those at which the payments would in the regular course be made, but by making the rent-charges variable according to the price of corn, (a course which the careful restriction hitherto against fixing the amounts in money and from the tithe commutation practice might probably be followed,) the value of the lord's rights would be depreciated to a most ruinous extent.

The following example will show the probable extent of depreciation under the corn rent-charge system.

Assume that various copyholds, the value of the lord's rights in which was, at the passing the first act, 125*l.* a year, are to be commuted at a corn rent-charge. The valuation will be made at the time when the copyholds are to be commuted, and when the great depreciation in the price of produce would cause a much larger reduction in value than 25*l.*; but assume that sum as the reduction in value,—when the sum at which the rent-charge would be fixed, would be 100*l.* This sum would be converted into corn, not at the prices when the property was worth the 125*l.*, but the value at the commutation being only 100*l.*, corn to that amount only would be computed and would be 95·522 bushels of wheat, 163·265 of barley, and 230·216 of oats.

By the last six weeks' average of the price of corn, (a price as high as may reasonably be expected hereafter,) wheat was 4*s.* 9½*d.* per bushel, barley 2*s.* 11½*d.*, and oats were 1*s.* 10½*d.*

These prices would give for the payment of the rent-charge 68*l.* 16*s.* 9*d.*, or not much more than half the value of the lord's rights when the first act passed, and only about two-thirds of the value in money at the time of the commutation.

It should also be remarked that the original conversion prices were so fixed that a tithe commutation rent-charge of 100*l.* was worth a copyhold commutation rent-charge of 102*l.* 12*s.* 6*d.*, and that in the tithe commutation an addition was made to allow for rates; whilst in the case of copyholds, no provision of the kind is made, and the fear that such rent-charges may be made rateable to relief of the poor is not one of an unreasonable character.

A single perusal of sections 3 and 4, will show that the power given to the lord to enforce commutation is illusory.

It seems strange that these attacks should be made on rights of lords of manors, when it is obvious that a most easy and simple course might be adopted by which the obnoxious quality of copyholds might be got rid of without doing injustice to either party.

That plan is to adopt the principle found so advantageous in the case of assessed taxes, and by a simple agreement, provide that in future all fines and heriots should, instead of being uncertain in amount, be fixed at a certain sum in money,—no alteration being made in the times at which they should become payable.

A power given to the Commissioners to fix the amount, in case of difference, would be all the discretionary power required, and would effect all the objects necessary to free the tenant from objectionable liabilities.

It may be asked, why no commutations under the existing acts? The plain answer is, that the very strange restriction forced into the acts, by which the payments are made variable according to the price of corn, has rendered the acts inoperative,—lords of manors feeling that it would be an act of the most absurd folly to accept such rent-charges or fines in place of those fixed in money, and the copyholders also objecting to the uncertainty in the amount of payments.

The present bill has one good section, (the 33rd,) which removes the restriction against commutations at fines or rent-charges fixed in money, and it is to be hoped that should the bill pass, the removal of such restriction will lead to many voluntary commutations on the simple plan to which I have alluded; the power given to the tenants to enforce commutations inducing lords to commute who are now unwilling to do so; and the uncertainty of the consideration which the commissioners may fix, and the probability of an immediate rent-charge being part of the consideration, added to the knowledge of the expense to which an applicant may be subjected in compelling a commutation, will operate to prevent tenants from adopting the compulsory clauses.

Should such be the operation, it will be very beneficial, but should the second section be generally acted on and rent-charges made the principal consideration, manorial property will be most seriously and most unjustly depreciated.

The provisions in the bill as to the fixing scales of fees and taxing bills of fees appear to me to be in principle just, and the more

so as the fees of stewards who, like myself, are not attorneys are also subjected to taxation. The irregularity in amount of bills of fees hitherto has fairly called, on the part of the public, for some power to settle the amount of stewards' fees; and though, judging from the reports of the Commissioners, these gentlemen do not estimate the value of stewards' services very highly, the taxing master will doubtless, in giving his suggestions and assistance in the matter, protect the stewards against any unfair reduction in their remuneration from a want of practical acquaintance with the extent of their duties.

R. R.

SUGGESTIONS FOR IMPROVING THE PRACTICE IN THE COUNTY COURTS.

1. Let the clerk and high bailiff reside in the Court town, and let not the same person be clerk or high bailiff to more than one Court.

2. Let the clerk be compelled (unless otherwise requested by the parties or their attorneys) to deliver all subpoenas, summonses, and orders to the parties or their attorneys, and let them be served by the parties or by any person they may wish.

3. Let no document be sealed with the seal of the Court till after it has been properly filled up and signed; and let the Christian and surnames of all the parties be inserted at full length in every document.

4. Let the parties have a right to be furnished with a bill of fees and costs and to attend the taxation.

5. Let a Court be held at intervals of not less than four weeks nor more than five weeks. Let not any Court be opened earlier than nine nor later than ten in the morning; and let not the judge have power to adjourn the Court while any business is waiting to be heard.

6. Let the fees payable to the judges' clerks and bailiffs be abolished, and let them be paid fixed salaries out of the Consolidated Fund.

7. Let the expenses of the Court be paid out of the Consolidated Fund.

8. Let the Lord Chancellor's Commissioners have power, subject to the provisions of the 12 & 13 Vict. c. 101, s. 12, to alter the rules and forms which have been made and framed by the five judges of the Superior Courts, and to frame any form they may think requisite.

9. Let all rules and regulations which have been made by any one of the County Court judges be repealed, and let all such rules and regulations be made in future by the Lord Chancellor's Commissioners alone, and let them be entered in a book to be kept for that purpose at the clerk's office, and also kept hung up in some conspicuous place in the Court-house and in the clerk's office.

10. Let the parties have a right to employ an attorney and counsel in any manner they may think proper; and let the attorney have a right

to remuneration; and let the Lord Chancellor's Commissioners frame a scale of fees and costs payable to counsel and attorneys.

11. Let no person be allowed to appear or act for any other party in the Court, except the husband, wife, counsel, or attorney of such party.

12. Let the parties have a right of appeal, under certain restrictions, to the Lord Chancellor's Commissioners or any three of them; but let not any judge hear an appeal from his own Court.

13. Let not any person committed to prison be discharged out of custody before the expiration of the term for which he was committed.

14. Let the parties themselves, or their attorneys, and not the clerk of the Court, receive all moneys adjudged or ordered to be paid.

15. Let not the judge have power to grant a greater or less allowance to a witness than what has been or may be fixed by the rules of practice.

16. Let the following be the form of the summons to appear to plaintiff:—

No. of Plaintiff.

(L. S.) In the County Court of _____ at _____

A. B. plaintiff

against

C. D. defendant.

Debt or claim £

Costs . . .

£ " " "

A plaintiff having been entered in this Court against you by the above named plaintiff in an action on contract [or for tort] for the recovery of £ _____ for [here state the substance of the cause of the action.] [*The particulars of which are hereto annexed when the cause of action exceeds 5*l*.*] You are hereby required to pay the plaintiff the above debt and costs, or to enter appearance to the plaintiff in my office, situate at _____, within eight days after the service thereof, inclusive of the day of such service. And take notice that in default of your so doing, plaintiff will be at liberty to sign judgment against you for the debt and costs, and to issue execution against and seize and sell your goods and chattels, wherever they may be found. And take further notice, that in case you have been personally served with this summons, on application, &c., [same as in the present summons to the end of the notice endorsed thereon.]

17. Let the following be the form of the plaintiff's note.

No.

(L.S.) County Court of _____ at _____

£ _____ fees paid.

A. B. plaintiff

against

C. D. defendant.

The above cause [or causes] has [or have] been entered, and you will be entitled to sign judgment and issue execution against the goods of the defendant at any time after the 8th day inclusive, from the time of the service of the summons to appear to the plaintiff, unless he shall previously have paid you, entered an appearance to the plaintiff signed, [the rest as in the present form.]

18. Let the defendant be at liberty to enter an appearance at any time before judgment signed, and if an appearance be entered, let the cause be tried at the next Court to be held, not sooner than 10 clear days from the time of entering the appearance, and let the clerk give the plaintiff and defendant eight clear days' notice of the time when it will be tried.

19. Let a proper book for entering appearances be provided and kept by the clerk at his office.

20. Let the plaintiff be entitled to sign judgment and issue execution at any time before appearance after eight days inclusive, from the time of the service of the summons, on his producing and leaving with the clerk of the Court an affidavit of the debt and costs not having been paid to him, and of the personal service of such summons, or of its having been delivered to some person at the last known place of abode or business of the defendant, and in the latter case of a previous demand having been made upon, or particulars having been previously furnished to, defendant. Let the plaintiff be nonsuited if on applying to sign judgment he cannot produce either of such affidavits. Let every affidavit on which a judgment is signed be filed of record. Let every cause be out of Court in which no proceedings shall have been taken within four calendar months from the time of entering the plaintiff, or from the last proceeding.

21. Let the following fees and no more be taken till otherwise provided for, (i. e.) for entering the plaintiff, issuing the summons and plaintiff's note, the fees the judge and clerk are now entitled to for the summons and for entering the plaintiff and issuing the summons; for entering an appearance and giving notice of trial, the same fees as the clerk is now entitled to for entering a plaintiff and issuing the summons thereon; for filing the affidavit of service, the same fee as the clerk is now entitled to for swearing a witness; for signing judgment, the judges' and clerks' present fees for hearing without a jury; for sealing a consent, the same fees as the clerk is now entitled to for entering the plaintiff and issuing the summons; for giving every notice, the same fee as the clerk is now entitled to for entering and giving notice of jury being required.

22. Let the defendant be at liberty to give plaintiff a consent to sign judgment in any manner he may think proper; and let every such consent be available if it is sealed with the seal of the Court, but not otherwise.

23. Let not the judge have power to make an order for payment by instalments without the consent of the plaintiff; and let not the judge be entitled to any fee for an application for an order.

24. Let every order be in the first person and signed by the judge and sealed with the seal of the Court.

25. Let the plaintiff be entitled to employ two officers if he think it necessary, but let him not be obliged to do so contrary to his wish.

26. Let the clerk be obliged to give the

plaintiff three clear days' notice of all money paid into Court by the defendant, and of every special defence and set-off, and of every trial by jury.

27. Let the parties be entitled to a subpoena for a witness at any time before the cause is called on; but if it shall not have been served at least 24 hours before the time of opening the Court, let the judge have the sole power of determining whether such service was good.

28. Let the clerk, and not the plaintiff, give the defendant three clear days' notice of the plaintiff's acceptance of the money he, defendant, may have paid into Court, and of every trial by jury.

29. Let the clerk, three clear days before the holding of the Court, stick up a list in his office and also in the Court-house of all trials to be heard at that Court.

30. Let the words, "*as to which there may have arisen doubts or have been conflicting decisions in the said Courts*," contained in the 12th section of the 12 & 13 Vict. c. 101, be repealed.

31. Let a demand for a jury be given to the clerk or left at his office five clear days before the hearing.

THE TRUSTEE BILL, 1850.

THIS is a bill brought in by Lord Brougham to consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees and Trustees. It recites the 11 Geo. 4, and 1 Wm. 4, c. 60, for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders, in certain Cases: And the 4 & 5 Wm. 4, c. 23, for the Amendment of the Law relative to the Escheat and Forfeiture of Real and "Personal Property holden in trust:" And the 1 & 2 Vict. c. 69, to remove Doubts respecting Conveyances of Estates vested in Heirs and Devises of Mortgagees.

It is now proposed to consolidate and amend those statutes, and after repealing them, to enact in regard to *Lunatic Trustees and Mortgagees*, as follows:—

"That when any lunatic shall be seised of any land upon any trust or by way of mortgage, the Lord Chancellor may make an order that such lands be vested in such manner and for such estate as he shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment of the lands; s. 3.

"That when the lunatic shall be entitled to any contingent right in any lands upon any trust or by way of mortgage, the Lord Chan-

cellor may make an order wholly releasing such lands from such contingent right, or disposing of the same to such person as the Lord Chancellor shall direct; s. 4.

"That when any lunatic shall be solely entitled to any stock or in any chose in action upon any trust or by way of mortgage, the Lord Chancellor may make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof; and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or chose in action upon any trust or by way of mortgage, the Lord Chancellor may make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said Lord Chancellor may appoint; s. 5.

"That when any stock shall be standing in the name of any deceased person whose personal representative is a lunatic, or when any chose in action shall be vested in any lunatic as the personal representative of a deceased person, the Lord Chancellor may make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof, in any person or persons he may appoint; s. 6.

The next class of provisions relates to *infant trustees and mortgagees*. They are as follow:—

"That where any infant shall be seised or possessed of any lands upon any trust or by way of mortgage, the Court of Chancery may make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; s. 7.

"That where any infant shall be entitled to any contingent right in any lands upon any trust or by way of mortgage, the Court of Chancery may make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; s. 8.

Where trustees are *out of the jurisdiction* of the Court, it is thus provided:—

"That when any person solely seised or possessed of any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found, the Court may make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; s. 9.

"That when any person or persons shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the Court of Chancery, or who cannot be found, the Court

may make an order vesting the lands in the person or person so jointly seized or possessed, or in such last-mentioned person or person together with any other person or persons, in such manner and for such estate as the said Court shall direct; s. 10.

"That when any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery, or cannot be found, it shall be lawful for the said Court to make an order wholly releasing such land from such contingent right, or disposing of the same to such person or persons as the said Court shall direct; s. 11.

"That when any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the Court of Chancery or cannot be found, it shall be lawful for the said Court to make an order disposing of the contingent right of the person, out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons;" s. 12.

When it is uncertain which trustee was the *survivor*, or whether the last trustee be *living*, it is provided in the former case:—

"That the Court of Chancery may make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; and the order shall have the same effect as if the *survivor* of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate; s. 13.

"And where it shall not be known, as to the trustee last known to have been seized or possessed, whether he be living or dead, the Court is authorized to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct;" s. 14.

In cases where the trustee dies *without an heir*, or it is unknown who is his heir or devisee, it is provided:—

"That the Court may make an order vesting the lands in such person or persons in such manner and for such estate as the said Court shall direct; s. 15.

"And when any lands are subject to a contingent right in an *unborn* person, who upon coming into existence would in respect thereof become seized or possessed of such land upon any trust, it shall be lawful for the Court of Chancery to make an order which shall wholly release and discharge such lands from such contingent right in such unborn person;" s. 16.

As to trustees refusing:—

"Where any person jointly or solely seized or possessed of any lands upon any trust, shall after a demand by a person entitled to require a conveyance or assignment of such lands, or a duly authorized agent, have stated in writing

that he will not convey or assign the same, or shall neglect or refuse to convey or assign such lands for the space of 28 days next after a proper deed for conveyance or assigning the same shall have been tendered to him by any person entitled to require the same, or by a duly authorized agent of such last-mentioned person, it shall be lawful for the Court of Chancery to make an order vesting such lands in such person or persons in such manner and for such estate as the said Court shall direct; s. 17.

"That where any person jointly or solely entitled to a contingent right in any lands upon any trust shall, after a demand for a conveyance or release of such contingent right by a person entitled to require the same, or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey or release such contingent right, or shall neglect or refuse to convey or release such contingent right for the space of 28 days next after a proper deed for conveying or releasing the same shall have been tendered to him by any person entitled to require the same, or by a duly authorized agent of such last-mentioned person, it shall be lawful for the Court of Chancery to make an order releasing or disposing of such contingent right in such manner as it shall direct;" s. 18.

When any person to whom any lands have been conveyed by way of *mortgage* shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the re-conveyance of such lands, then in any of the following cases the Court of Chancery may make an order vesting such lands in such person or persons in such manner and for such estate as the Court shall direct:—

"When an heir or devisee of such mortgagee shall be out of the jurisdiction of the Court of Chancery, or cannot be found:

"When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such lands or a duly authorized agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of 28 days next after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

"When it shall be uncertain which of several devisees of such mortgagee was the *survivor*:

"When it shall be uncertain as to the *survivor* of several devisees of such mortgagee, or as to the heir of such mortgagee whether he be living or dead:

"When such mortgagee shall have died in-

testate as to such lands and without an heir, or shall have died and it shall not be known who is his heir or devisee:

"And the order of the Court shall have the same effect as if the heir or devisee or surviving devisee, as the case may be, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate;" s. 19.

In every case where the Lord Chancellor, or the Court, shall, under the provisions of this act, be enabled to make an order having the effect of a conveyance or assignment of any lands, it shall also be lawful for the Lord Chancellor, or the Court of Chancery, (as the case may be,) should it be deemed more convenient, to make an order appointing a person to convey or assign such lands; and the conveyance or assignment of the person so appointed shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying or assigning the said lands as an order of the Lord Chancellor, intrusted as aforesaid, or the Court of Chancery, would in the particular case have had under the provisions of this act; s. 20.

As to any lands situated within the Duchy of Lancaster or the Counties Palatine of Lancaster or Durham, the Court of the Duchy Chamber of Lancaster, the Court of Chancery in the County Palatine of Durham, may make a like order in the same cases as to any lands within the jurisdiction of the same Courts respectively as the Court of Chancery.

[To be concluded in our next Number.]

CHANCERY REFORM.

WE had lately occasion to notice a pamphlet of Master Farrer on the proposed alterations in the practice and course of proceeding in Chancery. We have now to direct the attention of the profession to a Letter addressed by Master Brougham to the Lord Chancellor upon the bill, to give primary jurisdiction to the Masters in Chancery in certain cases. It appears from the pamphlet before us, that the Master has been long engaged in devising a plan for the improvement of our Equity Practice. He says—

"On the 24th Feb. 1842, in reply to a letter which the Master of the Rolls addressed to the several Masters in Ordinary, I stated that for the evils most complained of, 'no orders of the Court can be framed, scarcely even to lessen, still less to cure them.' That in my opinion, 'Every Judge in Equity should, as far as practicable, hear the whole case before him

from the beginning to the end. For this purpose he would sit in public to make his orders and decrees, and in private (as the Masters do) to decide all questions that arose out of inquiries and investigations which he had himself directed. Thus he would be a Vice-Chancellor at certain times, and a Judge at Chambers at others. The mechanical inquiries at Chambers would be carried on by his chief clerk in all cases of account, investigation or examination of documents and deeds, and in every part of a case which is merely ministerial. His reports would require no confirmation; but if objected to might be appealed from to the Lord Chancellor, or what I should infinitely prefer, to a Court composed of the Lord Chancellor, Master of the Rolls, and one Vice-Chancellor, or two Vice-Chancellors in the event of the appeal being from the Master of the Rolls. Thus the same Judge would hear and preside over the investigation of the whole case—he would know how to work out, and in the shortest way, his own intentions; he would know when solicitors were improperly litigious or interposed difficulties for the sake of delay—and would have in his own hands the power (to be given expressly by an act of parliament) of punishing them by costs or otherwise."

"As this scheme necessarily involved an entire change in the constitution of our Court, including the abolition of the Masters, I did not expect it to find much favour or support, and I therefore added, that 'at least in certain cases, such as administration and creditors' suits, suits for accounts, for foreclosure and redemption, appointment of guardians, receivers, trustees, and the like, parties might if they pleased be allowed to go in at once before the Master, without the expensive and utterly useless ceremony of preliminary pleadings, decrees, and orders—which afford no protection to the suitor, because in such cases they are made as of course'—and I concluded, 'If a party prefer the Master as the judge of his case, to a judge sitting in open Court, and his opponent can offer no reasonable objection, why put them to the expense, generally between 100*l.* and 300*l.*, of going there through the Court? If all parties are content with the Master's decision, why put them to the expense of having that decision confirmed by the Court? In all cases I would allow an easy and cheap appeal (by way of motion) from the Master to the superior Court. But wherever you can, by all means give the Master primary jurisdiction."

The doctrine thus propounded eight years ago, it is designed to carry into effect by the bill before the House of Lords, called "The Masters' Jurisdiction in Equity Bill," introduced by Lord Brougham, and to which the Master now calls the Lord Chancellor's attention. He says—

"I would gladly have extended it to a more numerous class of cases than it at present embraces; and I know that such a measure was prepared under the direction and with the en-

ture approbation of a numerous association of solicitors, who represent the most influential members of that branch of the profession. But as this is an experiment which the legislature may not be prepared at first to carry out to its full extent, I consider it wiser to begin by trying it in the first instance upon administration suits—and to this the measure is chiefly applied. I need not trouble you with all the details; but I may state that from returns I procured, I have ascertained that about 12,000 probates are annually granted upon amounts exceeding 500*l*. Of these, *less than* 600 are administered by the Court of Chancery. The others are kept out of Court by the great expense and delay which attend the proceedings there under the present system."

Under the present system, an administration, which now costs many hundred pounds, Master Brougham undertakes to say, will be effected under his plan for 30*l*. He says—

"From communications I have had with solicitors representing a large body of the profession, I am assured that they would consider themselves sufficiently remunerated in the average of cases, by that amount of payment. And I can perfectly believe it—for a solicitor would then have twenty cases for one that he has now—and it will pay him better to have twenty cases at 30*l*. or even 20*l*. a-piece, than one at 300*l*.—not only will he get more in amount, but he will get his money speedily, instead of having to wait three, four, or five years before the suit is finished or his bill taxed and paid. At present, long and protracted suits are frequently a positive loss to the solicitor, because the interest at five per cent. upon his outlay, amounts to more than the profits allowed him in taxation."

And the learned writer supports his opinion by reference to the working of the Joint-Stock Companies' Winding-up Act. The machinery, he contends, which has been found sufficient for large and complicated cases of partnership, both as to amount and number of parties, may be applied to that of ascertaining and paying the debts of an individual.

We would especially direct the attention of our readers to the following proposed change, in regard to the allowance of the costs of proceedings by a *single sum, or fee*. Master Brougham says—

"I hold this to be of the utmost importance, because I feel persuaded that it will lead to one of the greatest practical judicial reforms ever attempted. It will lead, I verily believe, to a complete alteration in what I consider to be the root of nearly all the evils of our present system of law procedure. It will lead, as I confidently hope, to a system of paying the solicitor *when his work is ended, and according to*

the value of the services rendered. Nothing can be more vicious than the present scheme of costs. A solicitor is now paid *by steps*, and it is his interest to *multiply steps*; he is now paid in proportion to the number of words he can heap together; it is therefore his interest to *multiply words*. He is now paid by the number of times he attends his client, the Court, or the Master; it is his interest by all means in his power to *multiply attendances*. On the other hand, a solicitor now, gives up a great deal of time to getting up his client's case, and for this he is allowed nothing in taxation. If he is a London agent, he writes innumerable letters to the country solicitor, for none of which he is allowed to charge. The whole system throughout the profession, is, making one description of business pay for another. A solicitor takes long causes, that he may get short ones. He makes estates, which the Court ought to protect, pay for litigious cases, which give him an infinity of trouble, but which, according to the laws of taxation, yield him little or no profit.

"Now, I believe it to be perfectly practicable to find a substitute for this vicious mode of remuneration, by *paying by the job*. I have already been able to apply this in some cases I have had under the Winding-up Act (in which a power is given to the Master to pay in one sum, if he think fit); and I see no reason why it should not be quite as applicable to administration suits."

We shall be glad to receive the opinion of our readers on this novel proposition for remunerating professional services.

AMENDMENTS IN THE NEW STAMP DUTIES BILL.

THIS Bill, which was first printed on the 22nd March, has been amended and very importantly improved. Several of the objectionable provisions which were pointed out in our last number have been altered or omitted altogether; and several beneficial additions have been made. The bill as amended was re-printed on the 11th April. The following are the alterations in the bill as first printed:—

In the 5th section, the passages, which would have most seriously affected all practitioners, have been struck out; and they are now liable only for the duties which they have or may actually receive.

In the 6th section, relating to the terms on which deeds may be stamped after execution, the party is to pay interest at 5 per cent. on the deficiency of the duty.

In Schedule B, under the head "*Mortgage*," the *ad valorem* duty on agreements, with a deposit of deeds, is confined to charges on lands; and the proviso enacting that

deeds stamped after their execution shall operate only from the day of stamping as if then executed, is expunged.

And in *settlements*, the clause extending the *ad valorem* duty to *powers* for charging lands with sums for raising portions, is also omitted.

In the re-print of the bill the following additions appear:—

Copyholds, not exceeding the value of 20s. yearly, are to be charged the same as conveyances or mortgages.

Memorials of deeds to be registered are to have a duty equal to the *ad valorem* stamp duty chargeable on the deed, not exceeding 10s.

Mortgage Transfers. The great grievance, which has been so often noticed in regard to these stamps, appears to be removed by the amended bill, which expressly provides that a covenant by the original mortgagor, or a new proviso for redemption, or a power of sale, shall not be chargeable with any additional duty.

We understand, however, that in order to remove all possible doubts on these much litigated questions, the Incorporated Law Society has prepared a special clause, which we trust will be adopted.

Clauses for carrying into effect the other amendments suggested by the society have also been submitted to the House by Mr. Mullings. They are as follow:—

1. Conveyances, mortgages, and settlements of property, under contracts or obligations before the 20th March last, to be exempted from any increased *ad valorem* duty. 2. Removing doubts on the amount of stamp duties, by authorizing the Commissioners to fix the duty, subject (on payment of 40s.) to an appeal to one of judges. 3. Instruments insufficiently stamped to be given in evidence on payment of the duty and a penalty into Court. 4. An exemption in

settlements in favour of settlors and of husbands and wives of settlors, and of sums or annuities not vested.

Besides the above alterations in the measure at first introduced, two others were made on the debate in Committee last Monday, viz.

1. That the *ad valorem* duty on mortgages is to be reduced from 10s. to 5s. per cent. on sums above 1,000l.

2. That the duty on bonds not exceeding 50l., which was intended to be 2s. 6d., is reduced to 1s. This was carried by a majority of 29 against the government, and it is evident that if the other duties in the schedule are to be lowered in proportion, the amount of the whole will fall so far short of the sum intended to be raised by the act, that the Chancellor of the Exchequer must materially alter his plan. The House will go into Committee again on Monday.

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

THE Annual General Meeting of this Society was held in Clifford Inn Hall, on Wednesday, the 17th inst. J. J. J. Sudlow, Esq., in the Chair. The provincial part of the Society was well represented by Mr. Crossley, Mr. T. Taylor, Mr. Thorley and Mr. Sudlow of Manchester; Mr. Sangster of Leeds, Mr. Watson and Mr. Statham of Liverpool, Mr. Lewis of Wrexham, and Mr. Moss of Hull. A full and able report was read by Mr. Shaen, the secretary, detailing the steps taken during the past year by the Committee of Management in promoting the interests of the profession and the improvement of the law. We hope to find space in an early number for this valuable statement, with the resolutions which were passed, a list of the Committee, and the substance of the several remarks addressed to the meeting.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Lord Chancellor.

Weaver v. Grant. March 2, 7, 8, 14, 1850.

SALE OF ARREARS OF ANNUITY.—BILL TO SET ASIDE.—LAPSE OF TIME.—CONSTRUCTIVE FRAUD.

Where a bill was filed to set aside the sale of the arrears of an annuity charged as estates in Jamaica to the defendant, who was consignee of such estates, on the ground of constructive fraud, 16 years after the transaction, the bill, on appeal from and

confirming the decree of the Vice-chancellor Knight Bruce, was dismissed with costs.

THIS was an appeal from the Vice-Chancellor Knight Bruce, dismissing a bill to set aside an assignment of the arrears of an annuity of 1,000l., secured on estates in Jamaica, on the ground of inadequacy of consideration. It appeared that in 1804 the plaintiff was entitled to an annuity of 1,000l., charged on certain Jamaica estates, which, however, in 1829, became depreciated in value, and the annuity fell in arrears. The defendant, who was consignee of the estate, then purchased such arrears,

amounting to 3,500*l.* for 1,750*l.* In consequence of the subsequent emancipation of the slaves, the defendant was enabled to pay himself the arrears, but there remained a sum of 9,000*l.* due to him as consignee. This suit was instituted in 1845, to set aside such sale, on the ground of constructive fraud, in consequence of the defendant, as consignee, being fully acquainted with the nature of the estate.

Rennals and Cooke in support of the appeal; *Cooper and Lewis* for defendant Grant; *Bacon* for other defendants, contra.

The Lord Chancellor, after taking time to consider, said, it did not appear the defendant had made an unfair use of his knowledge as consignee of the value of the estates, but rather that the purchase had, contrary to expectation, turned out profitable. This bill had not been filed until after the lapse of 16 years from the transaction, and the appeal would therefore be dismissed, and the decree of the Court below, so far as related to the costs, be varied, and the bill be dismissed with costs.

Master of the Rolls.

Rowley v. Adams. March 12, April 15, 1850.

VENDOR AND PURCHASER.—CONTRACT.—
DELAY IN DELIVERY OF ABSTRACT.—
INTEREST ON PURCHASE-MONEY.

Where the delay in completing a contract of purchase was not occasioned by the purchaser but by a delay in delivering the abstract of title, an application to pay the money into Court and for possession, was granted without payment of interest on such purchase-money.

This was a motion, that Henry Wood the purchaser of lot one, part of certain property sold under the trusts of a will, might be at liberty to pay the sum of 2,540*l.*, purchase-money thereof, together with 122*l.* 19*s.* amount of valuation of fixtures thereon, into Court, to the credit of "the real estate account," and that he might be let into possession. It appeared that the abstract of title to the estate had been delayed in the delivery, and that the purchaser was therefore prevented from obtaining possession.

Turner in support; *Rouppell and Erskine* for the executors, contra, unless interest were paid from the date of the contract.

Cur. ad. vult.

The Master of the Rolls said, that it did not appear from the affidavits that the delay was occasioned by the purchaser, and he could not therefore be liable to pay interest. The application would be granted—each party to pay his own costs.

April 15.—*Hennet v. Luard and others*—Motion refused with costs to dismiss bill as against defendant without costs, on payment into Court of balance of interest received by defendant, after deducting interest due on promissory note.

— 15.—*Hodgson v. Earl Powis*—Injunction

granted to restrain the directors from applying the moneys received under their acts of parliament towards completing a portion only of their railway.

— 16.—*Carlisle v. South Eastern Railway Company*—Part heard.

Vice-Chancellor of England.

Duke of Leeds v. Earl Amhurst. March 14, 15, 16, 18, 19; April 16, 1850.

REFERENCE AS TO AMOUNT OF WASTE.—
MODE OF TAKING ACCOUNTS.

Upon a bill filed charging an estate with waste, a reference was directed as to the amount, and the Master reported a certain sum as due for dismantling the mansion-house, cutting down timber, and for interest. Exceptions to such report, questioning the mode in which the conclusions had been arrived at, were overruled on the ground that it was occasioned by the acts of the party committing the waste.

This bill was filed by the plaintiff against the trustees and devisees to charge the estate of the late Duke of Leeds with certain acts of waste committed in 1800 and 1809, by pulling down the mansion-house of Kiveton Hall, Yorkshire, cutting and selling the ornamental timber and other trees, and converting the estate into a farm. It appeared that, by the marriage settlement of the late duke, the estates were settled in 1797 upon him, without impeachment of waste, with remainder to his eldest son in tail male. In 1819, the plaintiff attained 21, and joined with his father in suffering a recovery of the estates without at the time making any claim for compensation in respect of waste committed. In 1838 the late duke died, and this suit was then instituted, and upon the hearing in 1846, a reference was directed to ascertain the amount of waste, and the Master now reported that a sum of 11,965*l.* was chargeable in respect of the sale of materials of the mansion-house, and 18,507*l.* by sale of timber and other trees, which, together with 12,528*l.* for interest, made the whole amount to 43,000*l.*

Stuart, J. Parker, and G. L. Russell in support of exceptions to this report, on the ground that the Master had proceeded on no fixed principle in taking the accounts, but had in fact merely assessed the compensation; and also had not set forth any of the particulars thereof.

Bethell and Renshawe contra.

Cur. ad. vult.

The Vice-Chancellor said, that upon reference to the plans, it appeared waste had been committed, and although the amount could not be exactly made out, yet as the late duke had created the difficulty, it was too much to say the whole was therefore to go for nothing. There had been an unquestionable injury done, and the consequences ought to recoil on the party doing it. This was on the principle of

natural justice, the Roman civil law and equity: Popham, 38; *Warde v. Ayre*, Bulstr. pt. 2, 323; *Fellows v. Mitchell*, 2 Vern. 516; *White v. Lady Lincoln*, 8 Ves. 363. The exceptions would therefore be overruled.

Beale v. Symonds. March 21, 1850.

WILL.—CONSTRUCTION.—NEWLY ACQUIRED ESTATES.—REQUEST VOID FOR UNCERTAINTY.

The testator, by his will, devised to the plaintiff certain estates in U., excepting E., which he gave with the residue. By a codicil, he bequeathed his subsequently acquired estates to the same uses as were declared in his will in respect of estates situate in or belonging to the "parish, hamlet, district, or territory" in which such newly-acquired estates were. These estates were situate in the tithing in which E. was, but in the same parish as U. and E. were: Held, that codicil was void for uncertainty, and that such estates passed by the residue.

THE testator, Samuel Beale, by his will, dated in 1836, gave all his estate in Upton-on-Severn to his son Thomas Beale, the plaintiff, with the exception of Eade-on-the-Hill, which he devised with the residue of his property to Mary Symonds. The testator having subsequently acquired property, by a codicil dated in 1840, gave all his newly purchased lands to the same uses as were declared in the will of property situate in the "parish, hamlet, district, or territory," in which such newly purchased estates were situate. It appeared that the newly purchased lands were in the parish of Upton and tithing of Newbridge, and that although Eade-on-the-Hill was in Newbridge tithing, the other lands he bequeathed to Thomas Beale were not.

Stuart, Bethell, J. Parker, Roll, L. Russell, Shapter, James, Whitbread, Prendergast, and Berkeley for the respective parties.

The Vice-Chancellor said, the codicil was void for uncertainty, and that therefore the after-acquired property passed under the 1 Vict. c. 26, under the general devise of the residue.

Vice-Chancellor Knight Bruce.

Ex parte Hennessy, in re St. George's Steam Packet Company. March 23, April 15, 1850.

WINDING-UP ACT.—EXECUTOR OF VENDOR, LIABILITY OF.—TRANSFER OF SHARES TO PARTY REPUDIATING CONTRACT.

H. contracted to sell 16 shares in a joint-stock company to a party for whom the company's authorised agent acted, and N. paid the purchase-money and transferred the shares into his son's name, who however repudiated the contract and did not execute the transfer. Upon appeal from the Master's decision excluding H.'s executor, N., and his son from the list of contributories

under the 11 & 12 Vict. c. 45, held, that H.'s executor was liable.

MICHAEL HENNESSY contracted, in 1841, to sell the 16 shares which he held in the above company to a person for whom the company's recognised agent acted, and the purchase-money was paid by Mr. T. R. Needham. The shares were transferred into the name of Richard Needham, his son, who however repudiated, and did not execute the transfer, but they still remained in his name and the repudiation was only known to his father. The vendor afterwards died, leaving the respondent, Mr. J. C. Hennessy, his executor. Upon the reference under the 11 & 12 Vict. c. 45, the Master directed Mr. R. Needham and the executor to interplead before him, and he excluded their names from the list of contributories.

Bacon and J. V. Prior, for the official manager, in support of an appeal from this decision.

Malins and Surragé for the executor, contra.

Cur. ad. vult.

The Vice-Chancellor said, the only person whose name could be on the list was the personal representative of the vendor, as Mr. Needham, the father, was not before the Court, and his son was a stranger to the transaction, having repudiated the transfer. There would therefore be a reference back to the Master to review his decision—costs of both parties to come out of the estate.

Vice-Chancellor Wigram.

Monypenny v. Dering. Feb. 28, March 1, 2, 5, 6, 9, April 16, 1850.

WILL.—CONSTRUCTION.—ESTATE IN GAVEL-KIND.—LIMITATIONS OVER.

Testator devised estates in gavelkind to his son P. M. for life, remainder to his first son for life, remainder to such first son's son and the heirs male of his body; and in default of issue of P. M., or of there being none living at his decease, upon trust for T. M. for life, remainder to his eldest son, remainder to the eldest son's first son in tail male: Held, that P. M. took an estate for life, with remainder to his eldest son for life, and that the family of T. M. took as tenants in tail.

JAMES MONYPENNY, by his will, devised an estate in Kent to his son Phillips Monypenny for life, remainder to his first son for life, remainder to the son of such first son and the heirs male of his body; and, in default of issue of the said P. Monypenny, or of there being none living at his decease, upon trust for Thomas Monypenny for life, remainder to his eldest son, remainder to the first son of such eldest son in tail male. The estate was gavelkind. Upon a case to the Exchequer, it was certified that P. Monypenny took an estate for life with remainder to his eldest son for life, and that the other limitations over were void for remoteness. There being supplemental facts adduced and this Court not being satis-

fied with the certificate, another case was directed to the Common Pleas, who certified in accordance with the Exchequer as to the estates for life, but contrary as to the effect of the limitations over.

Roll and C. Hall for the plaintiff; *Makins and Cooté* for an infant defendant; *Borton and Collins* for other parties in the same interest; *Wood and Faber* for Mrs. S. Monypenny; *Willcock and F. J. White* for the heir-at-law.

Cur. ad. vult.

The *Vice-Chancellor* held, that the family of Thomas Monypenny were entitled as tenants in tail under the limitations over, and confirmed the certificates as to the life estates.

April 15, 16.—*Inderwick v. Snell* — Part heard.

Queen's Bench.

Quire v. Stubley and another. April 15, 1850.

LOAN SOCIETY.—ACTION FOR DEPOSITS.—MONEY HAD AND RECEIVED TO PLAINTIFF'S USE.

A rule to enter the verdict for the plaintiff on leave reserved, was refused in an action by a member of a loan society to recover, under a count for money had and received to his use, from the trustees the amount of his deposits, which he had given notice to withdraw.

THIS was a motion to enter the verdict for the plaintiff for 20*l.*, on leave reserved at the trial before Mr. Baron Alderson, at the last Liverpool assizes. The action was brought by a member of a loan society, which had become insolvent, to recover under a count for money had and received to the plaintiff's use, the sum of 20*l.* from the trustees, the amount of his deposits, and which he had given notice to withdraw.

T. Jones in support.

The *Court* said, that the plaintiff had only a right in common with the other members to withdraw his deposits, and could not therefore recover in an action for money had and received for his use, and the rule was refused.

April 15.—*Bishop of Exeter v. Gorham*—*Cur. ad. vult.*

—15.—*Barton v. Bricknell*—Rule nisi to set aside verdict for plaintiff and enter it for defendant, or to reduce damages.

—16.—*Kirk v. Bell*, P. O.—*Cur. ad. vult.*

—16.—*Copper Miners' Company v. Fox*—Rule nisi for new trial on the ground of misdirection.

Queen's Bench Practice Court.

(*Coram Mr. Justice Coleridge.*)

In re Thomas James Moses. April 16, 17, 1850.

ATTORNEY.—CHANGE OF NAME.—ALTERING ROLL.—AFFIDAVIT IN SUPPORT.

An attorney was allowed to alter his name on

the roll, in compliance with the request of his father, by striking out his present surname and adopting his second Christian name as a surname.

Semble, the affidavit in support of such an application should state that the applicant was not apprehensive of any proceedings against him in his former name.

THIS was an application to alter the name of an attorney from "Thomas James Moses," on the roll of attorneys of this Court, to "Thomas James.

Simon, in support, stated that the applicant was admitted in 1848, and that his father was about to advance him 800*l.* to purchase a practice, on condition that he would make the above alteration in his name, citing *In re William Daggett*, 39 L. O. 244.¹

Cur. ad. vult.

The *Court* said, that the Roll of Attorneys was a permanent document containing the name by which the party was admitted, and it seemed inconvenient to alter it, because it would import that an error had been made on the roll. The case, however, cited was similar to the present, and the application would therefore be granted, but the entry on the record ought to appear to be an alteration, and in future applications of this kind it should be stated in the affidavit in support that the applicant was not apprehensive of any proceedings against him in his former name.

Common Pleas.

Leader v. Strange. April 16, 1850.

MUSICAL COMPOSITIONS.—PUBLISHING.—COPYRIGHT ACT.—GUILTY KNOWLEDGE.

In an action under the 5 & 6 Vict. c. 45, for the infringement of copyright in a musical composition, to which the defendant pleaded "not guilty," held, that as the defendant was found to have neither printed nor to have had any guilty knowledge of publishing a pirated copy, he was entitled to have the verdict entered for him on the plea.

A RULE nisi had been obtained, pursuant to leave reserved, on 11th January, to enter the verdict for the defendant upon the plea of "not guilty." The action was brought for the infringement of copyright in a musical composition, and on the trial before L. C. J. Wilde, at the Middlesex Sitings after Michaelmas Term last, a verdict was found for the plaintiff with nominal damages. The jury found that the defendant did not print the publication in question, and that he did not publish it with a guilty knowledge that it had been unlawfully pirated. By the 5 & 6 Vict. c. 45, s. 15, it is provided, that if any person in any part of the British dominions printed, or caused to be printed, or exposed, or caused to be exposed, for sale or hire, any book, &c., which should be the subject of copyright, he should be liable to certain penalties; and also that any person

¹ See also *Doe d. Luscombe v. Yates*, 5 B. & Ald. 556.

unlawfully printing, or causing to be printed, any book imported from parts beyond the seas, or knowing the book to have been unlawfully printed or imported, should sell it, or cause it to be sold, &c., should also be liable to certain penalties.

Channell, S. L., showed cause against the rule; *Byles, S. L.*, in support, was not called on.

The Court held, that the defendant was entitled to a verdict on his plea, as the printing and guilty knowledge of publishing the pirated copy on his part had been disproved; and the rule was made absolute accordingly.

Ellison v. Collingridge. April 15, 1850.

PROMISSORY NOTE.—ORDER FOR PAYMENT OF MONEY.

An order on the cashier by the managing director of an assurance society, 53 days after date, to credit Messrs. P. & Co. or order, the sum of 500*l.* in cash, on account of the corporation, held, to sustain an action on promises to recover that sum.

THIS was a motion on leave reserved to set aside the verdict for the plaintiff in this action, which was brought on an instrument described in one count as a bill of exchange, and in another as a promissory note. The following was the instrument:—"Marine Department. Sea Fire and Life Assurance Society, 31, Cornhill, London, 10th September, 1849. 500*l.* To the cashier, 4185. Fifty-three days after date, credit Messrs. Plummer & Co. or order, with the sum of 500*l.*, claimed for Cleopatra, in cash, on account of this corporation. Augustus Collingridge, managing director."

Byles, S. L., and *Power*, in support, on the ground that the order was not an order to pay but merely an order on the inferior officer of the corporation to give credit to the plaintiff in their books.

The Court said, that it was clearly an order by one man on another for the payment of money, and was not in ambiguous terms, and there appeared no other intention in any part of the instrument but that it should be paid when presented at maturity: and the rule was therefore refused.

Barnes v. Ward. May 3, 1849. Feb. 25, 1850.

LORD CAMPBELL'S ACT.—COMPENSATION FOR DEATH BY ACCIDENT.—PUBLIC HIGHWAY.—OPEN AREA.

Held, that the plaintiff as administrator of his wife who was killed by falling into an open area in front of the defendant's house contiguous to a public highway, was entitled to recover in an action under the 9 & 10 Vict. c. 93, although the deceased might be a trespasser.

THIS was an action under the 9 & 10 Vict. c. 93, by the plaintiff, James Barnes, as administrator of Jane Barnes deceased, to recover damages for her death, which was alleged to have been occasioned by the defendant's negli-

gence in permitting an area to some houses which he was building to remain unenclosed, and into which the deceased fell and was killed. The defendant pleaded not guilty, that he was not possessed of the messuage and appurtenances, and that it was not his duty to have enclosed the area. It appeared that between the footpath and the area there was only a kerbstone a few inches high for iron rails to be set into. At the trial the plaintiff obtained a verdict, and the jury expressly found that the footpath was a highway from time immemorial. A rule nisi having been obtained for a new trial,

Byles, S. L., and *Ogle*, in support, contended that the deceased was a trespasser, and that the defendant was not therefore bound to fence the area, citing *Blyth v. Topham*, Cro. Jac. 158; 1 Rolle's Abr. 88; *Jordin v. Crump*, 8 M. & W. 782.

M. Chambers, and *Hugh Hill*, contra, cited *Coupland v. Hardsingham*, 3 Campb. 398; *Jarvis v. Dean*, 3 Bing. 447.

Cur. ad. vult.

The Court said, that notwithstanding the deceased might be a trespasser, the defendant was liable for an injury sustained while so trespassing, and that besides, leaving an open area adjacent to the public highway was a nuisance for which an action could be sustained. The rule was therefore discharged.

April 15, 16.—*Maclean v. Leeming*—Rule for new trial on the ground of misdirection refused, but granted on the ground of being against evidence.

— 16.—*Laycock v. Pickslay*—Rule nisi on leave reserved to enter verdict for defendant or for new trial.

— 16.—*Moss v. Smith*—Rule nisi to review taxation.

Court of Echequer.

April 16.—*Fowler v. Drake*—Rule nisi for new trial on the ground of improper reception of evidence, and that the verdict was against evidence.

— 16.—*Eastern Union Railway Company v. Symonds*—*Cur. ad. vult.*

Court of Echequer Chamber.

Regina v. Williams. Feb. 1, 1850.

WARRANT OF DISTRESS FOR CHURCH RATES.—SALE "FORTHWITH."—INDICTMENT FOR RESCUING GOODS.—IRREGULARITY.

A warrant of distress for church rates was held bad where it directed the sale of the goods forthwith, instead of in not less than four days or more than eight days; and an indictment for rescuing such goods was quashed.

THIS was an indictment for rescuing certain goods seized under a warrant of distress for non-payment of church-rates. It appeared

that the warrant directed the goods to be sold forthwith, instead of "in not less than four days or more than eight days."

Pashley, in support of the conviction, contended that the warrant was good, as the distress for church-rates depended on the common law liability, and not in consequence of an act of parliament.

The Court, however, held that a warrant for church-rates must follow the law prescribed for all warrants of distress, and as the goods were directed to be sold "forthwith," the warrant was bad, and that therefore the prisoner must be discharged.

Court of Bankruptcy.

(Coram Mr. Commissioner Evans.)

In re Geering. March 7, 12, 1850.

ACTION IN TORT BY OFFICIAL ASSIGNEE.—DISHONOUR OF BILL.—APPLICATION FOR PAYMENT OF DAMAGES TO HOLDERS.

An application for an order on the official assignee to pay over a sum of money, which had been recovered in an action of tort from a bank, for allowing the bankrupt's bill to be dishonoured when they had received the moneys to meet the same, to the holders of the bill, was refused, but the holders allowed to prove for the amount.

THIS was a dividend-meeting of the bankrupt, a grocer at Dereham, Sussex.

Lawrence applied for an order on the official assignee, to pay over to Messrs. Sparks & Co., bankers of Littlehampton, a sum of 175*l.* 2*s.* 3*d.*, which had been recovered from the London and County Branch Bank at Arundel, in an action of tort, for allowing a bill for that amount, payable to Messrs. Sparks, to be dishonoured, when the money had been paid into the bank for that specific purpose, citing *Left v. Morris*, 4 Sim. 607; *Malcolm v. Scott*, 6 Hare, 570; *Exparte Hobhouse*, 2 Deac. 291; *Exparte Waring*, 19 Ves. 345; 2 Rose, 182; 2 G. & J. 404.

Linklater, contra.

The Commissioner, after taking time to consider, said, that in the cases cited the assignees had the property in trust to discharge certain bills of exchange, and the holders were held entitled thereto, although between them and the assignees there was no privity, as otherwise it could not be disposed of, and by payment to the holders the estate was relieved from such bills. Here, however, the assignees did not possess the property *quod* trustees, nor had Messrs. Sparks any interest therein, as the verdict was not for any injury to them but to the bankrupt's estate. They will, however, be entitled to prove for the amount.

BUSINESS OF THE COURTS.

CHANCERY CAUSE LISTS.

Easter Term, 1850.

AT WESTMINSTER.

Lord Chancellor.

APPEALS.

S. O., Att.-Gen. v. Gibbs, Rock v. Ditto, appeal.
S. O., Dawson v. Brinckman, appeal.
Tomlinson v. Troughton, Haydock v. Tomlinson, appeals, pt. hd.
Hughes v. Williams, appeal.
Walsh v. Trevanion, 4 causes, appeal.
Price v. Berrington, 3 causes, 2 appeals.
Williamson v. Gordon, appeal.
Benyon v. Nettlefold, appeal.
Short v. Mercier, appeal.
Fowler v. Reynal, appeal.
Miller v. Huddleston, appeal.
Wilkinson v. Godson, appeal.
Yates v. Madden, appeal.
Innes v. Sayer, appeal.
Menzies v. Connor, 2 appeals.
Hickley v. Boyer, appeal.
Rowland v. Witherden, appeal.
Myers v. Perigal, appeal.
Pearson v. Goulden, appeal.
Pearson v. Beck, appeal.
Pearson v. Hulme, appeal.
Pearson v. Oldham, appeal.
Watkins v. Williams, Havard v. Church, appeal.
Emmett v. Dewhurst, appeal.
Briggs v. Penny, appeal.
Hickman v. Hickman, appeal.

Rodick v. Gandell, appeal.
Robinson v. Geldart, appeal.
Salmon v. Dean, appeal.
Smith v. Pincombe, appeal.
Vivian v. Cochrane, appeal.
Sturge v. Sturge, appeal.
Pelly v. Wathen, appeal.
Rhodes v. Matson, 5 causes, appeal.
Smith v. Smith, appeal.
Kekewick v. Manning, appeal.
Attorney-General v. Murdock, appl.
Deeks v. Bell, appeal.
Toft v. Stephenson, Graham v. Reeves, appeal.
Smale v. Graves, appeal.
Hawkes v. Eastern Counties Railway Company, appeal.
Reynell v. Sprye, 4 causes, appeal.

Master of the Rolls.

JUDGMENTS (reserved).

{ *Holl v. Gordon*, }
 { *Same v. Holl*. }
Thornber v. Sheard.
Howard v. Prince, Same v. Stapleton, Same v. Howard, fur. dirs. costs and petition.
Attorney-General v. Dalton, cause.

PLEAS AND DENURRERS.

Stand over, Dean and Chapter of Ely v. Gayford.
Do., *Same v. Waddelow*.
Do., *Same v. Same*.
Do., *Same v. Bliss*.
Do., *Same v. Shillito*.
Do., *Same v. Hensley*.

Stand over, Lewis v. Baldwin, on defendant's objection for want of parties.

Do: Munn v. Stant, objection for want of parties. Ashham v. Barker, dem.

CAUSES.

S. O. To present petition, Stourton v. Jerningham.

Stand over till after Report on exceptions, Gas Light and Coke Com. v. Symonds, Symonds v. Gas Light and Coke Company, Stillman v. Gas Light and Coke Company, fur. dirs. and costs.

Stand over to amend, Baynton v. Hooper. Same v. Same.

Stand over to add parties, Johnson v. Thomas.

Stand over until after trial of action at law, Hele v. Bexley, Same v. Same, Same v. Same, Same v. Bowyer, Same v. Donovan, exons. fur. dirs. and costs.

Michaelmas Term, Hargrave v. Hargrave, fur. dirs. and costs.

Part heard, Rooth v. Tomlinson.

Langdale v. Morrison.

Coxhead v. Babb, Ditto v. Ditto.

Meddowcroft v. Campbell, Same v. Hughes.

Ballenger v. Hawes, Buck v. Denis.

Gregory v. Davies.

Penruddock v. Hammond.

Johnstone v. Thompson.

Cotton v. Clark.

Morgan v. Morgan, Morgan v. Pulman, Lines v. Pulman, exons.

Guardner v. Boucher.

Moore v. Smith.

Denne v. Denne.

Ellis v. Bowman.

Moss v. Moss.

Shallcross v. Wright, fur. dirs. and costs.

Biddles v. Jackson, Same v. Same.

Byrne v. Norcott.

Thornton v. Knight, Palmer v. Knight, fur. dirs. and costs.

Wood v. Shallard, Same v. Same, fur. dirs. and costs.

Whicker v. Hume, Hume v. Gilchrist, exons.

Lewis v. Lewis, Same v. Duggin, fur. dirs. and costs.

Biederman v. Seymour, fur. dirs. and costs.

Hardey v. Hawkshaw.

Kirkman v. Mister, fur. dirs. and costs.

Gresley v. Earl of Chesterfield, fur. dirs. and costs.

Creak v. Irvine.

Kewney v. Bradshaw.

Lautour v. Holcombe, Ditto v. Farquhar, Ditto v. Majorbanks, Ditto v. Lautour, Ditto v. Majorbanks, fur. dirs. and costs.

Gregory v. Spencer.

Cohen v. Wilkinson.

Mount v. Mount.

Triston v. Hardy.

Duberly v. Day.

Attorney-General v. Colegrave.

Mules v. Jennings.

Weymouth v. Davis, Kendall v. Davis, Ditto v. Ditto, Weymouth v. Taylor, fur. dirs. and costs.

Attorney-General v. Churchill, Ditto v. Ditto, Ditto v. Baker, fur. dirs. and costs.

Attorney-General v. Mayor of Gloucester.

Lumsden v. Morison.

Fisher v. Hepburn, fur. dirs. and costs.

Godeffroy v. Morison.

Chapman v. Chapman, Ditto v. Pennell.

Attorney-General v. Brook, Ditto v. Ditto, rehearing.

Royds v. Royds, fur. dirs. and costs.

Edgley v. Lloyd.

Short, Wilcock v. Mitchell, and petition.

Gooch v. Gooch, Ditto v. Clarke, fur. dirs. and costs.

Matthews v. Bradshaw, Ditto v. Leybun, exons.

Jenner v. Shaw, fur. dirs. and costs.

Petre v. Petre, ditto.

Bowler v. Fraser, ditto and petition.

NEW CAUSES.

Attorney-General v. Newcomon.

Melson v. Kemp.

Short, Chancellor v. Morecraft.

Whicker v. Hume.

Newry Warrenpoint and Rostrevor Railway Company v. Moss.

Kerby v. Barton, Barton v. Ditto, fur. dirs. and costs.

Vice-Chancellor of England.

PLEAS, DEMURRERS, CAUSES, EXCEPTIONS, AND FURTHER DIRECTIONS.

Parkyn v. Cape.

Ellis Fletcher v. Moore.

Norman v. Hammack.

Hyde v. Neate, fur. dirs. and costs.

Jenkins v. Haynes, fur. dirs. and costs.

Attorney-General v. Bishop of St. David's, 6 causes, fur. dirs.

Pepper v. Decker, fur. dirs. and costs.

Waters v. Mynn.

Bristow v. Needham, exons.

Attorney-General v. Lambard.

Drysdale v. Carter.

Hillcourt v. Widdrington.

Attorney-General v. Badger.

Graham v. Lyon.

West v. Jones.

Boileau v. Crane.

Turner v. Larkin, fur. dirs. and petition.

Stuart v. Long.

Flint v. Gaunt.

Ashburner v. Wilson.

Macbean v. Babington.

Rogers v. Hale.

Jefferies v. Jefferies, fur. dirs. and costs.

Fosbrooke v. Woodcock.

Swann v. Easton, fur. dirs.

Thornhill v. Manning.

Elias v. Birkhead.

Hayward v. Townsend.

Hovell v. Haworth.

Uttermare v. Stevens.

Simmons v. Rudall, 2 causes.

Robinson v. Hedger.

Briggs v. Hartley, fur. dirs. and costs.

Morritt v. Walton, ditto.

Wayne v. Lewis.

Mackinnon v. Stewart.

Ludlam v. Elliott.

Newman v. Hatch.

Perkins v. Ede, exons.

Hodgkinson v. Gilbert, fur. dirs. and costs.

Horridge v. Jones.

Eldridge v. Smith.

Fairhurst v. Malcolm, fur. dirs. and costs.

Grimston v. Oxley.

Goode v. Waters.

Taunton v. Green, fur. dirs. and costs.

Heath v. Chapman.

Browne v. Paull, fur. dirs. and costs.

Bower v. Ostler.

Maudsley v. Hall, fur. dirs. and costs.

Geib v. Dibley.
 Westbrook v. M'Kie, fur. dirs.
 Langworthy v. Church.
 Field v. Titmuss.
 Brougham v. Squire Ditto v. Witham
 Creswicke v. Parker, fur. dirs. and costs.
 Long v. Bunny, ditto.
 Sawyer v. Mills.
 Hedges v. Ewing.
 Attorney-General v. Bodman.
 Short, Owen v. Penny.
 Jackson v. Jackson, fur. dirs. and costs.
 Usher v. Mould.
 Fletcher v. Fletcher.
 Willis v. Black, 7 causes, fur. dirs. and costs.
 Gelson v. Gelson.
 Underwood v. Jee.
 Oakes v. Jones, fur. dirs. and costs.
 Lyne v. Pennell.
 Melling v. Bird, Ditto v. Anderton.
 Mather v. Bird.
 Pee v. Marsh, fur. dirs. and costs.
 Wilkinson v. Lenke, ditto.
 Mayhew v. Cannan.
 Hunt v. Bohn, 2 causes.
 Allcock v. Kempson, 3 causes.
 Joyce v. Hopkins.
 Ackrill v. Ackrill.
 Preston v. Ety, fur. dirs. and costs.
 Lynam v. Peat, ditto.
 Edgley v. Maslin.
 Dickson v. Cotterell, fur. dirs.
 Topping v. Sewell.
 Smithy v. Burrage.

Vice-Chancellor Knight Bruce.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Evans v. Oldnall, objection as to parties.
 Furlonger v. Midland Great Western Railway
 Company, Ireland, objection as to parties.
 Ward v. Martin, 2 dems.
 Stanley v. Bulkeley.
 S. O., Webster v. Parratt.
 S. O., Burburr v. Jee.
 S. O., Lewin v. Kellett.
 Horwood v. Griffith.
 Calder v. Calder.
 Coleridge v. Matthews.
 Griffiths v. Evans.
 Stone v. Tompson.
 Westlake v. Bolitho.
 Short, Redshaw v. Newbold, fur. dirs.
 Levason v. Howard.
 Fenwick v. Fenwick.
 Malcolm v. Malcolm, fur. dirs.
 Broadbent v. Thornton, Ditto v. Sturgis.
 Sterry v. Clifton, equity resd.
 Paige v. Beachey.
 Harrison v. Armitstead.
 Rollins v. Groom.
 Page v. Firmstone.
 Cooke v. Cuncliffe.
 Hicks v. Welford.
 Tompsett v. Beeching.
 Sabin v. Sabin.
 Stainer v. Maxwell.
 Williams v. Hughes.
 Makepeace v. Jury, fur. dirs.
 Wright v. Barnewall, Barnwall v. Wright.
 Mosley v. Hide.
 Bridson v. Colley.
 18th April, Craig v. Snowden.
 Collingwood v. Sitwell, fur. dirs.

18th April, Ledward v. Ledward.
 Lee v. Delane, fur. dirs. and costs.
 22nd April, Dodd v. Holbrook, Ditto v. Ditto.
 Ditto, Ogle v. Morzan.
 Ditto, Bird v. Freeman.
 Hall v. Gee, fur. dirs. and costs.
 Brinton v. Price, ditto.
 26th April, Connett v. Croft.
 Short, Nowlan v. Walsh.
 Roberts v. Roberts, fur. dirs. and costs.
 Howell v. Cochrane.
 Mountford v. Stockley, fur. dirs. and costs.
 Weaver v. Grant, exons.
 Milne v. Macgauran, fur. dirs. and costs.
 22nd May, Percival v. Caney.
 Ditto, Salmon v. Cutts.
 Consett v. Bell, fur. dirs. and costs.
 22nd May, Huben v. Thomas.

Vice-Chancellor Stigmar.

CAUSES, FURTHER DIRECTIONS, AND EXCEPTIONS.

Hunter v. Mackreth, dem. pt. hd.
 Attorney-General v. Cooper, dem.
 Mence v. Bagster.
 Sharp v. Taylor, Ditto v. Ditto, exons. and fur.
 dirs.
 Robinson v. Sheffield.
 Ditto v. Weir.
 Downes v. Collins, exons.
 O'Reilly v. Alderson.
 Methold v. Turner, Ellis v. Ditto.
 Whipple v. Martyn, fur. dirs. and costs.
 Odell v. Lockett, ditto.
 Marston v. Hope, Ditto v. Pennell.
 Edgell v. Wickham, fur. dirs. and costs.
 Calder v. Calder.
 Dickenson v. Mort, fur. dirs. and costs.
 Hedges v. Jefferies, Ditto v. Ditto, ditto.
 Phillips v. Phillips, fur. dirs. and costs.
 Toft v. Stephenson, Graham v. Reeves, ditto.
 Lansdell v. Luck, ditto.
 Hav v. Scott, re-hg.
 Miller v. Miller.
 Clarke v. Clarke, fur. dirs. and costs.
 Swaby v. Dickon, 8 causes, ditto & petition.
 Welsh v. Nixon.
 Smith v. Southam.
 Horrie v. Shepherd.
 Kersteman v. Wood, fur. dirs. and costs.
 Read v. Pigeon.
 Smith v. Smith, fur. dirs. and costs.
 Elliott v. Lyne, Ditto v. Symons, ditto.
 Hughes v. Godfrey, Ditto v. Taunton, fur. dirs.
 and costs.
 27th April, Warner v. Warner.
 8th May, Higgins v. Frankiss.
 Chilton v. Brough, exons.
 9th May, Harvey v. Stracey, Ditto v. Carter.
 22nd May, Letts v. The London Corn Exchange
 Company.
 Ditto, Peake v. Ledger.

Queen's Bench.—Crown Paper.

ADDITIONAL CAUSES.

Easter Term, 1850.

Leicestershire.—The Queen v. The Justices of
 Leicestershire.
 Yorkshire.—The Queen v. The Tithe Commis-
 sioners for England and Wales, (pros. of Rev.
 John Marriner.)
 Merionethshire.—The Queen v. William Owen.

The Legal Observer,

DIGEST, AND JOURNAL OF JURISPRUDENCE.

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SATURDAY, APRIL 27, 1850.  
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COUNTY COURTS' EXTENSION BILL.

THE fate of this measure—the effect of which will probably be to cause the administration of the law to be looked upon with diminished respect—still remains undetermined. Many persons conceive that if the supposed popularity of the County Courts enables the mover of the bill to retain his majority in the House of Commons, there are a certain number amongst the members of the Upper House not so much influenced by a pressure from without, and who cannot be insensible to the injurious consequences which must inevitably follow the proposed alteration of the law. If the merits of the question could be rendered intelligible and the united sense of the profession clearly expressed, we have no doubt it would have its due weight with the House of Lords.

But it is too much to expect that upon a question of this nature the House of Lords is to throw itself into the breach and obstruct a bill which is assumed—as we have already ventured to suggest, most erroneously assumed—to be earnestly desired by the trading and working classes. If the bill reaches the Upper House, we anticipate that it will be received there without any hostile demonstration; but it is not too much to expect, from the practical knowledge and sagacity of the law lords, that modifications will be introduced rendering it much less injurious to the public as well as less objectionable to the profession.

The first duty of those who are interested in the bill is narrowly to watch the alterations sought to be introduced in the Commons' Committee; and this duty is the more imperative as it is now understood that the government have resolved not, as a government, to interrupt its progress, although the individuals composing the ex-

cutive are to be at liberty to express their dissent to its provisions.

It is somewhat remarkable that but few of the Law Societies have taken any very active part against the measure. We last week gave the substance of the reasons against it, extracted from the petition of the Incorporated Law Society, which was presented by the Attorney-General. We understand, also, that the Preston Law Society has bestowed some pains in pointing out objections to the bill; but we have not heard of any other opposition from the attorneys, either to its principle or details. We understand, however, that a very celebrated and popular writer, a distinguished member of the Bar, is engaged upon a pamphlet which will, doubtless, set forth as well the *public* as the professional grounds on which the project should be resisted. We trust the argument will be in time to stop the mischief in the House of Commons. We should regret that the duty of rejection should devolve on the House of Peers.

The progress of the bill should be stayed, at least for the present session; but if the House should determine to proceed, then we rely that a clause giving concurrent jurisdiction to the Superior Courts will be inserted. How could such a clause be consistently refused? The majority who passed the second reading say, that the whole country demands the measure: if this be true, there can be no danger in permitting the suitors to select which Court they prefer. If the proviso be resisted, it must be because the House has been deceived into the belief that the suitors generally require the extension. Our belief is that they do not require it, and that the petitions in favour of the bill do not represent the true state of the public opinion or the public interest.

Again, it will be necessary to alter and amend the clause by which an appeal to the Superior Courts is allowed. It is clogged with too many conditions to render it available,

We refer to some communications on this subject in another part of the Number, page 498 *post*.

THE TRUSTEE BILL, 1850.

[Concluded from our last Number.]

When trustees of stock are out of the jurisdiction of the Court,—or refuse to transfer,—or to receive and pay over dividends,—or when stock is standing in the name of a deceased person,—the Court is empowered to make orders vesting the right to transfer such stock, or to receive the dividends, in such person as the Court may appoint; ss. 22—25. And by the 26th section it is provided :—

“Where any order shall have been made under any of the provisions of this act vesting the right to any stock in any person or persons appointed by the Lord Chancellor intrusted as aforesaid, or the Court of Chancery, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorized and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names or otherwise, or relating to the receipt of the dividends thereof, to the extent and in conformity with the terms of such order; and the Bank of England, and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order as the said Bank of England, or such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made; and after notice in writing of any such order of the Lord Chancellor intrusted as aforesaid, or of the Court of Chancery, concerning any stock, shall have been given, it shall not be lawful for the Bank of England, or any company or association whatever, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock, or the payment of the dividends or produce thereof.

“And where any order shall have been made

under the provisions of this act, either by the Lord Chancellor intrusted as aforesaid, or by the Court of Chancery, vesting the legal right to sue for or recover any chose in action or any interest in respect thereof in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such chose in action;” s. 27.

The like provisions are made in regard to copyhold and customary lands; s. 28. And the following is the substance of other provisions in the bill :—

That when a decree shall have been made by any Court of Equity directing the sale of any lands for the payment of the debts of a deceased person, every person seised or possessed of such lands, or entitled to a contingent right therein, as heir, or under the will of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a trust within the meaning of this act; and the Court of Chancery is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person; s. 29.

The Court is also authorized to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn; s. 30.

Power is also given to make directions how the right to transfer stock is to be exercised; s. 31.

To remove difficulties in the appointment of new trustees, the following provisions are proposed :—

Whenever it shall be expedient to appoint a new trustee or new trustees, and it shall be found inexpedient, difficult, or impracticable so to do without the assistance of the Court of Chancery, the Court may make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees; s. 32.

The new trustees to have the powers of the original trustees, s. 33; with power to the Court to vest lands in the new trustees, s. 34; and to vest the right to sue at law in the new trustees, s. 35.

Such appointment by the Court of new trustees, and any such conveyance, assignment, or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have done; s. 36.

An order, under any of the heretofore contained provisions, for the appointment of a

new trustee or trustees, or concerning any lands, stock, or chose in action subject to a trust, may be made upon the application of any person *beneficially interested* in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and that an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action subject to a mortgage may be made on the application of any person *beneficially interested* in the equity of redemption, whether under disability or not, or of any person interested in the monies secured by such mortgage; s. 37.

The course of proceeding under the act is thus laid down:—

When any person shall deem himself entitled to an order under any of the provisions hereinbefore contained, it shall be lawful for him to exhibit before any one of the Masters of the Court of Chancery evidence in support of the facts whereon such order is sought to be obtained; and if such evidence shall be satisfactory to the Master he shall, at the request of the person adducing such evidence, give a certificate under his hand of the several material facts found by him to be true, and of his opinion that such person is entitled to an order in the form set forth in such certificate; s. 38.

Any person who shall have obtained such certificate may apply by motion to the Lord Chancellor or the Master of the Rolls for an order to the effect set forth in such certificate, or for such other order as such person may deem himself entitled to upon the facts found by the Master; s. 39.

Any person or persons entitled in manner aforesaid to apply for an order from the said Court of Chancery, or from the Lord Chancellor, may present a petition in the first instance to the Court of Chancery, or to the Lord Chancellor, for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof; s. 40.

Upon the hearing of any such motion or petition it shall be lawful for the said Court or for the said Lord Chancellor, should it be deemed necessary, to direct a reference to one of the Masters in Ordinary of the Court of Chancery to inquire into any facts which require such an investigation, or it shall be lawful for the said Court or for the said Lord Chancellor to direct such motion or petition to stand over, to enable the petitioner or petitioners to adduce evidence or further evidence before the said Court or before the said Lord Chancellor, or to enable notice or any further notice of such petition to be served upon any person or persons; s. 41.

The Court may dismiss the petition with or without costs; s. 42.

Whenever in any cause or matter, either by the evidence adduced therein, or by the

admissions of the parties, or by a report of one of the Masters of the Court of Chancery, the facts necessary for an order under this act shall appear to such Court to be sufficiently proved, the Court, either upon the hearing of the cause, or of any petition or motion in the cause or matter, may make such order under this act; s. 43.

Every order made under the provisions of this act shall recite the material facts which give the Court jurisdiction in the particular case; and such recitals shall, upon all questions as to the effect of such order, be conclusive evidence of the truth of the facts so recited, nor shall the validity of any such order be affected by subsequent proof that the facts therein recited were not true; s. 44.

The Lord Chancellor may exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action in the trustee or trustees of any charity or society over which charity or society the said Court of Chancery would have jurisdiction upon suit duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said Court of Chancery, or by order made upon a petition to the said Court under any statute authorizing the said Court to make an order to that effect in a summary way upon petition; s. 45.

There is to be no escheat of property held upon trust or mortgage; s. 46.

But the act not to prevent the escheat or forfeiture of beneficial interest; s. 47.

The money of infants and persons of unsound mind to be paid into Court; s. 48.

The Court may make a decree in the absence of the trustee; s. 49.

When any person shall, under the provisions of this act, apply to one of the Masters of the Court of Chancery in the first instance, and adduce evidence, for the purpose of obtaining the certificate of such Master as a foundation for an order of the said Lord Chancellor intrusted as aforesaid, or the said Court of Chancery, it shall be lawful for the said Master to dismiss such application, and to direct that the costs of any periods consequent thereon shall be paid by the person making the same; and all orders of the Master under this act shall be enforced by the same process as orders of the Court made in any suit pending thereon against any party thereto; s. 50.

The costs may be paid out of the estate; s. 51.

Upon any petition being presented under this act to the Lord Chancellor concerning a person of unsound mind, the Lord Chancellor may direct that a commission in the nature of a writ *de lunatico inquirendo* shall issue concerning such person, and to postpone making any order upon such petition until a return shall have been made to such commission; s. 52.

Upon any petition under this act, the Lord Chancellor or the Court of Chancery may postpone making any order upon such petition

until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose; s. 53.

The powers and the authorities given by this act to the Court of Chancery in England shall extend to all lands and personal estates within the dominions, plantations, and colonies belonging to her Majesty (except Scotland); s. 54.

The powers given to the Court of Chancery may be exercised by that Court in Ireland; s. 55.

The power of the Court of Chancery in Ireland extended to the Court of Exchequer in Ireland; s. 56.

The powers of the Lord Chancellor in lunacy to extend to property in the colonies; s. 57.

The powers of the Lord Chancellor in lunacy may be exercised by the Lord Chancellor in Ireland; s. 58.

THE STAMP DUTIES BILL.

FROM the number of alterations made in the new Stamp Duties Bill, it might be supposed that it is now free from objection; but the following remarks will show that it is still capable of further improvement.

Agreements for leases are still subjected to *ad valorem* duties, necessitating the production of the agreement and lease at the stamp office, in order to avoid the expense of a second *ad valorem* stamp:—thus not only occasioning expense and trouble, but risk in transit. As no exemption from the *ad valorem* duty applies to cases where the stamp does not exceed 1*l.*, the effect of the proposed scale of duties will be, to charge many agreements now liable to a duty of 2*s.* 6*d.* with a duty of 1*l.*

Annuities, for a fixed number of years, are charged with duty as bonds for the amount, not the present value of the payments. Thus, the amount of an annuity of 200*l.* for 25 years will be 5,000*l.*, whilst the present value, according to the table adopted by the bill in other transactions, will be 3,124*l.* 8*s.*; the stamp being thus unfairly increased from 8*l.* to 12*l.* 10*s.*, should the government scale of 5*s.* per cent. be carried. The injustice of this rate of charge is more obvious, from the subsequent parts of the bill, in which annuity considerations are made liable to *ad valorem* duty, only charging duty on the value, and not on the amount.

On sales in consideration of annuities, in which, from transactions of the kind being generally in respect of sales by poor persons and of small property, no *ad valorem* duty has hitherto been made payable; it is proposed to so charge such duty, and the true value of the annuities, according to rules specified in the bill, must be inserted in the conveyance. This will give much trouble and lead to dispute and litigation, whilst a simple provision, that the ages of the annuitants should be inserted in the deed would better protect the revenue and cause no difficulty.

Bonds and mortgages.—The scale of 5*s.* per cent. instead of 10*s.*, is a great improvement, but the increase will still be very considerable on large sums; and will be peculiarly oppressive on landed proprietors, who, from the difficulties in which they are now placed, must borrow largely. The Chancellor of the Exchequer appears, by the Times Report, to have stated on the 22nd instant, that the Railroad Companies were satisfied with the proposed scale of 5*s.* beyond 50*l.*, the duty up to that sum being 1*s.* Of course they would be satisfied, as they would make all their bonds for 50*l.*, and others pay the lower duty, whilst mortgages, to which landed proprietors must, in most cases, have recourse, would not be thus capable of subdivision.

Conveyances.—The *ad valorem* duty is extended to annuity considerations, and other matters not now subject to such duty,—and in the case of annuities, there was, as before stated, a good reason for exempting them from such duty. At all events, if made liable, the insertion in the conveyance of the real value of the annuity ought not to be required, but simply the insertion of the ages of the annuitants. The rate of *ad valorem* duty is increased, except on small sums, but not to the same extent generally as on bonds and mortgages,—still on even so small a sum as 1,900*l.* there will be an increase from 12*l.* to 19*l.*

Covenants are made subject to *ad valorem* duty, and even where entered into, in addition to a bond or other security bearing the *ad valorem* duty, it must, with the bond or other security be produced at the stamp office, and have a denoting stamp impressed;—thus subjecting the parties to trouble, expense and loss, and compelling the mortgagee in country cases to part with his securities for such purpose.

Leases are made subject to a double *ad valorem* duty, if granted under a sub-contract.

Settlements.—The Chancellor of the Exchequer has promised to withdraw the objectionable parts of the bill,—but the alterations should be attentively considered to prevent injury and dispute.

R. R.

NOTICES OF NEW BOOKS.

The Practice of the Superior Courts of Common Law, with reference to matters within their concurrent Jurisdiction. By HERBERT BROOM, of the Inner Temple, Esq., Barrister-at-Law, Author of "A Selection of Legal Maxims," &c. William Maxwell. 1850.

EASTER TERM, 1850, is certainly a stirring epoch in legal annals. It comes, with all kinds of agitation, to Westminster Hall, "with fear of change preplexing" the inmates. It sees the elevation of a new Lord Chief Justice of the kingdom. It is accompanied with parliamentary discussion upon judicial salaries, forms of pleading, and

vital changes in the constitution and jurisdiction of the Courts. In the midst of these exciting topics, a new work on the Practice of Westminster Hall has just appeared, well deserving the respectful attention of the profession. Mr. Broom's work on "Legal Maxims" has justly entitled him to be considered in the first rank of English modern law writers, and as a worthy successor of the late lamented and respected John W. Smith. From the discussion and illustration of the fundamental principles of our legal system, he has proceeded to the less grateful, but to the practitioner perhaps more useful labour of ascertaining and arranging the existing rules of practice, "which cannot be determined," he observes "in the same sense and with the same precision as the fundamental rules of law; for the rules of practice are essentially arbitrary in their origin, have been subject to perpetual fluctuation and are surrounded with technicalities." It is therefore of great importance to the practitioner to be in possession of a thoroughly trustworthy guide in such a labyrinth—where accuracy is indispensable and error accompanied with serious penalties; where the "*jus positum*" is all in all.

Mr. Broom appears to have devoted himself with every due solicitude to his task. He says in his preface, "that it has occupied his time almost unceasingly for the last two years; and that besides searching in the books, he had freely applied for information to friends of experience as special pleaders or at the Bar, from whom he had derived much useful knowledge and many valuable hints;" and he especially expresses his obligations to Mr. Aldridge, senior, of the Queen's Bench Office, for valuable aid—more particularly in the "Forms," used under the late important statute relating to attorneys, the 6 & 7 Vict. c. 73, with which that gentleman supplied him. "All the Forms connected with the service under articles, the examination, admission, and taking out of the certificate, have been repeatedly used in practice, and are in some measure, at all events, entitled to be regarded as authentic." In this volume alone, 5,000 cases are cited.

Ten years have elapsed since the publication of the respective works by Mr. Bagley and Mr. Lush, —and the first volume of the last edition of Mr. Chitty's edition of Mr. Archbold's work appeared in 1845, and the second volume in 1847. We need not remind our readers of the great fluctuations which have occurred in several important

branches of legal practice during the eventful interval of the last three or four years. Acts connected with joint-stock companies—the Bankruptcy Consolidation Act—the Act in relation to Proceedings against Justices, of the 11 & 12 Vict. c. 44—the practical working of the governing Attorneys' Act, and the County Courts Act, have all introduced changes of vital importance, which demand a new work on the subject of the practice of the Courts, as those changes themselves have constituted a growing demand on the attention of the judges. The object of the work is thus described:—"That to render it complete as a book of practice, all forms of ordinary occurrence and utility are throughout inserted. The Forms are not confined exclusively to matters of practice, but include such pleadings as seem calculated to illustrate and explain the text. They have been derived, as far as possible, from authentic sources." We have already cited the reference made by Mr. Broom to Mr. Aldridge, sen., of the Queen's Bench office, as to the Forms adopted under the Attorneys' Act. Additional forms, rendered necessary by the other statutes above mentioned, have been introduced by Mr. Broom, and can be found in no other work.

The volume now published contains,—1. An introductory view of the jurisdiction and routine of business of the Courts. 2. The whole law and practice relating to articulated clerks and attorneys, with forms of affidavits, notices, &c., and ample practical directions for their examination and admission. 3. Remarks as to the selection of the proper parties to sue and be sued in actions of contract and tort, with every point of a purely practical kind relating to this subject. 4. The practice connected with the writs of summons and distringas, the entry of appearance, and the declaration, with all the recent cases.

The second volume will deal with the subsequent proceedings in an action, and with various interlocutory matters of daily practice in the Courts and at the judges' chambers. It must be obvious, however, to our readers, that amidst the agitation of changes in pleading, practice, and jurisdiction referred to at the commencement of this notice, the publication of such second volume must necessarily be delayed. But the work before us deals with matters on which none of the contemplated changes, as we understand them, will materially operate.

Under the first head of his four divisions, Mr. Broom has written a succinct and read-

able account of the existing practical routine of the Courts at Westminster. The second division is devoted to a subject of great practical importance to the whole body of attorneys. It commences with the clerkship, and gives a full account of the practical working of the recent Governing Act relating to attorneys, their privileges and liabilities, their retainer and authority, and the taxation of and lien for their costs. To this important division 160 octavo pages are devoted, and the careful character of the author enables us confidently to recommend them to the practitioner. The third division is on parties to actions. On this subject, Mr. Broom is known to the profession as the author of a very valuable separate treatise, which is now out of print, and since that work the recent statutes connected with joint-stock and banking companies, actions against justices, &c., and the general Statute on Bankruptcy, have rendered this division of the work equally new and important. The last portion of the work brings up all the recent cases, hundreds of which have been decided since the last edition of any work on Practice.

SUGGESTIONS FOR IMPROVING THE COUNTY COURTS.

CHANGE OF CIRCUITS OF THE JUDGES.

To the Editor of the Legal Observer.

SIR,—Amongst the suggestions contained in your paper of the 20th instant, for improving the practice in the County Courts, there is one which it seems to me you must have forgotten;—it is, that the judges of each district should be changed,—at least once in every five years, as they are liable to form local prejudices, both for and against attorneys and suitors, which are apt to impede the due administration of justice.

A SUBSCRIBER.

FEEES IN SMALL DEBT COURTS.

To the Editor of the Legal Observer.

SIR,—To show the peculiar hardship of the Small Debt Courts, I send you the following case which occurred at Derby:—

I am a poor suitor, living 10 miles from Derby, and having a demand of 9l. 12s. against a respectable party at Derby, who refused to pay me; I was compelled to summon him in the County Court. I first naturally went to an attorney, who informed me that he could do nothing in it until the hearing, at which only he was allowed to appear, and then only, if I was successful, should I be able to get more than 15s. for his attending; by his desire I went to the office of the Court for a summons, when I was told I must go and make out two

fair copies of my demand, which I did, and then I was told I had 15s. 4d. to pay, which I paid; and as I have since understood that sum is made up of judge's fees, clerk's fees, and bailiff's fees, thus:—

Judge's fees.—Every summons . . . 2 0

Clerk's fees.—Entering every plaint and issuing the summons thereon . . . 2 0

Bailiff's fees.—Serving every summons within one mile . . . 0 10

Fee fund.—One shilling in the £. . . 9 6

I was preparing myself to raise the fees for the hearing, when I was served with a notice of the *defendant, demanding a jury*, which he had a right to do, and for which I understood he paid the clerk of the Court 17s. 10d., made up as follows:—

Clerk's fees.—Entering and giving s. d. notice of a jury being required . . . 1 6

Issuing summons for jury . . . 1 6

Swearing jury . . . 1 0

Bailiff's fees.—Serving every summons, order, or subpoena . . . 0 10

For 10 jury taking 10d. each . . . 8 4

For the jury . . . 5 0

On the morning of the hearing at the Court, before I was allowed to try my cause, I was ordered to pay 1l. 2s., made up as follows:—

Judge's fees.—Every hearing or trial s. d. with a jury . . . 10 0

Every order or judgment, or application for an order . . . 2 0

This by some method is doubled, so add another . . . 2 0

Clerk's fees.—Every hearing, trial, or nonsuit with a jury . . . 3 0

Entering and drawing up every judgment and order and copy thereof . . . 1 6

By some method this is also doubled, so add another . . . 1 6

Bailiff's fees.—Calling every cause . . . 0 6

Serving every summons, order, or subpoena . . . 0 10

Swearing every witness for plaintiff or defendant. each 4d., two charged . . . 0 8

It so happened that eight witnesses were examined on both sides, and 2s. more had to be paid for swearing witnesses.

In this cause I had to obtain an attorney to plead for me, besides which I brought my three witnesses without a subpoena, who came and gave their evidence, and yet when the cause was over, I was not allowed the witnesses' expenses, because I had not been to the clerk's office and paid him and the bailiff in case of each witness, as follows:—

Clerk's fees.—Every subpoena when s. d. required . . . 1 0

Serving every summons, order, or subpoena . . . 0 10

Ten miles off, at 4d. per mile . . . 3 4

Although all my three witnesses lived where I lived, and I and they went 10 miles to attend the Court, yet I was not allowed their expenses of attending, because I could not afford to go over 10 miles to the clerk's office, and not only order a subpoena for each, but pay their bailiff

and clerk 5s. 2d. each, although all at one village.

When the cause was tried I only recovered 3*l*., thereby more than half of all the above fees were lost to me, through trying a right above 5*l*. and getting under that sum:—not one penny of the fees was returned me, whereas had I issued my summons under 5*l*., the fees would only have been about *one half*.

A POOR SUITOR.

THE NEW ORDERS IN CHANCERY.

Monday, the 22nd day of April, 1850.

I. Any person seeking equitable relief may, without special leave of the Court, and instead of proceeding by bill of complaint in the usual form, file a claim in the Record and Writ Clerks Office, in any of the following cases; that is to say, In any case where the plaintiff is or claims to be,

1st. A creditor upon the estate of any deceased person, seeking payment of his debt out of the deceased's personal assets.

2nd. A legatee under the will of any deceased person, seeking payment or delivery of his legacy out of the deceased's personal assets.

3rd. A residuary legatee, or one of the residuary legatees, of any deceased person, seeking an account of the residue and payment or appropriation of his share therein.

4th. The person or any of the persons entitled to the personal estate of any person who may have died intestate, and seeking an account of such personal estate and payment of his share thereof.

5th. An executor or administrator of any deceased person, seeking to have the personal estate of such deceased person administered under the directions of the Court.

6th. A legal or equitable mortgagee or person entitled to a lien as security for a debt, seeking foreclosure or sale, or otherwise to enforce his security.

7th. A person entitled to redeem any legal or equitable mortgage or any lien, seeking to redeem the same.

8th. A person entitled to the specific performance of an agreement for the sale or purchase of any property, seeking such specific performance.

9th. A person entitled to an account of the dealings and transactions of a partnership dissolved or expired, seeking such account.

10th. A person entitled to an equitable estate or interest, and seeking to use the name of his trustee in prosecuting an action for his own sole benefit.

11th. A person entitled to have a new trustee appointed in a case where there is no power in the instrument creating the trusts to appoint new trustees, or where the power cannot be exercised, and seeking to appoint a new trustee.

II. Such claim in the several cases enumerated in Order I. is to be in the form and to the effect set forth in schedule A. hereunder written, as applicable to the particular case,

and the filing of such claim is, in all cases not otherwise provided for, to have the force and effect of filing a bill.

III. Every such claim is to be marked at or near the top or upper part thereof in the same manner as a bill is now marked with the name of the Lord Chancellor, and one of the Vice-Chancellors, or with the name of the Master of the Rolls.

IV. Upon filing such claim the plaintiff thereby claiming may sue out a writ of summons against the defendant to the claim, requiring him to cause an appearance to be entered to such writ, and also requiring him on a day or time to be therein named, or on the seal or motion day then next following, to show cause, if he can, why such relief as is claimed by the plaintiff should not be had, or why such order as shall be just with reference to the claim should not be made.

V. Such writ of summons is to be in the form and to the effect in that behalf set forth in No 1 of schedule B. hereunder written, with such variations as circumstances may require, and is to be sealed with the seal of the office of the Clerks of Records and Writs.

VI. In any case, other than those enumerated in Order I., or in any case to which the forms set forth in schedule A. are not applicable, the Court (if it shall so think fit) may, upon the ex parte application of any person seeking equitable relief, and upon reading the claim proposed to be filed, give leave to file such claim, and sue out a writ of summons thereon under these orders; and if such leave be given, an endorsement thereon by the registrar upon the proposed claim shall be a sufficient authority for the Record and Writ Clerk to receive and file such claim.

VII. In the case provided for by the 5th Article of Order I. any one person who, under the 3rd or 4th Article of Order I., might have claimed relief against the executor or administrator of the deceased person whose personal estate is sought to be administered, and the co-executor or co-administrator (if any) of the plaintiff, may be named in the writ of summons as defendants to the suit; and in the first instance no other person need be therein named.

VIII. In other cases the only person who need be named in the writ of summons as defendant to the suit in the first instance is the person against whom the relief is directly claimed.

IX. All claims, and all writs, caveats, proceedings, directions, and orders consequent thereon, either before the Court or in the Master's offices, are to be deemed proceedings, writs, and orders subject to the general rules, orders, and practice of the Court, so far as the same are or may be applicable to each particular case and consistent with these orders; and all orders of the Court made in such proceedings are to be enforced in the same manner and by the same process as orders of the Court made in a cause upon bill filed.

X. Writs of summons are, as to the number of defendants to be named therein, as to the

mode of service thereof, and as to the time and mode of entering appearances thereto, to be subject to the same rules as writs of subpoena to appear to and answer bills.

XI. The time for showing cause named in any writ of summons (except a writ of summons to revive or carry on proceedings) is to be 14 days at the least after service of the writ; but, by consent of the parties, and with the leave of the Court, cause may be shown on any earlier day.

XII. At the time for showing cause named in the writ, or on the seal or motion day then next following, or so soon after as the case can be heard, the defendant, having previously appeared, is personally or by counsel to show cause in Court, if he can, (and if necessary by affidavit,) why such relief as is claimed by the claim should not be had against him.

XIII. At the time appointed for showing cause, upon the motion of the plaintiff, and on hearing the claim, and what may be alleged on the part of the defendant, or upon reading a certificate of the appearance being entered by the defendant, or an affidavit of the writ of summons being duly served, the Court may, if it shall think fit, make an order granting or refusing the relief claimed, or directing any accounts or inquiries to be taken or made, or other proceedings to be had, for the purpose of ascertaining the plaintiff's title to the relief claimed; and further, the Court may direct such (if any) persons or classes of persons as it shall think necessary or fit to be summoned or ordered to appear as parties to the claim, or on any proceedings before the Master, with reference to any accounts or inquiries directed to be taken or made, or otherwise.

XIV. Every order to be so made is to have the effect of and may be enforced as a decree or decretal order made in a suit commenced by bill, and duly prosecuted to a hearing according to the present course of the Court.

XV. If, upon the application for any such order, or during any proceedings under any such order when made, it shall appear to the Court that for the purposes of justice between the parties it is necessary or expedient that a bill should be filed, the Court may direct or authorize such bill to be filed, subject to such terms as to costs or otherwise as may be thought proper.

XVI. The orders made for granting relief in the several cases to which the forms set forth in schedule A. are applicable, may, if the Court thinks fit, be in the form and to the effect set forth in schedule C. as applicable to the particular case, with such variations as circumstances may require.

XVII. Under every order of reference to the Master under these orders, the Master is, unless the Court otherwise orders, to be at liberty to cause the parties to be examined on interrogatories, and to produce deeds, books, papers, and writings, as he shall think fit, and to cause advertisements for creditors, and if he shall think it necessary, but not otherwise, for heirs, and next of kin, or other unascertained

persons, and the representatives of such as be dead, to be published in the usual forms, or otherwise, as the circumstances of the case may require; and in such advertisements to appoint a time within which such persons are to come in and prove their claims, and within which time unless they so come in, they are to be excluded the benefit of the order; and in taking any account of a deceased's personal estate under any such order of reference, the Master is to inquire and state to the Court what part, if any, of the deceased's personal estate is outstanding or undisposed of, and is also to compute interest on the deceased's debts, as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the order, and to compute interest on legacies after the rate of four per cent. per annum from the end of one year after the deceased's death, unless any other time of payment or rate of interest is directed by the will, but in that case according to the will; and under every order whereby any property is ordered to be sold with the approbation of the Master, the same is to be sold to the best purchaser that can be got for the same, to be allowed by the Master, wherein all proper parties are to join as the Master shall direct.

XVIII. If upon the proceedings before the Master under any such order it shall appear to the Master that some persons, not already parties, ought to attend or to be enabled to attend the proceedings before him, he is to be at liberty to certify the same; and upon the production of such certificate to the Record and Writ Clerk, the plaintiff may sue out a writ of summons requiring the persons named in such certificate to appear to the writ, and such persons are thereupon to be named and treated as defendants to the suit.

XIX. Such writ of summons under an order or Master's certificate, is to be in the form and to the effect in that behalf set forth in No. 2 of schedule B., with such variations as circumstances may require.

XX. The persons so summoned having appeared, are to be at liberty to attend, and to be entitled to notice of the proceedings before the Master under the order of reference, subject to such directions as the Master may make in respect thereof.

XXI. Where any proceedings originally commenced by claim and writ of summons shall by the death of parties, or otherwise, have become abated or defective for want of parties, and no new relief is sought, a claim to revive or carry on the suit may be filed; and such claim is to be in the form set forth in No. 12 of schedule A.

XXII. The party claiming simply to revive or carry on the proceedings may sue out a writ of summons requiring the defendant thereto to appear to the writ, and to show cause, if he can, why the proceedings should not be revived or carried on.

XXIII. Such writ of summons is to be in

the form and to the effect in that behalf set forth in No. 3 of schedule B., with such variations as circumstances may require.

XXIV. If any defendant to any such writ is desirous of showing cause why the proceedings should not be revived or carried on, he is to appear and to file a caveat against such revivor or carrying on in the Record and Writ Clerks' Office, in the form set forth in No. 4 of schedule B., and to give notice thereof in writing to the opposite party. If no such caveat be filed within eight days from the time limited for his appearance to the writ, then at the expiration of such eight days the proceedings are to be revived, and may be carried on without any order for the purpose; and a certificate of the Record and Writ Clerk, that no caveat has been filed within the time limited is to be a sufficient authority for the Master to proceed. But if any such caveat be filed, the proceedings are not to be revived or carried on without an order to be obtained on motion, of which due notice is to be given.

XXV. Where any further or supplemental relief is sought, and such supplemental relief is such as is provided for in any of the cases enumerated under Order I., a supplemental claim may be filed in such of the forms set forth in schedule A. as is applicable to the case.

XXVI. If such supplemental relief is not such as is provided for by Order XXV., a supplemental claim may be filed stating shortly the nature of the plaintiff's case, and the supplemental relief claimed, but the leave of the Court is to be obtained previously to the filing thereof, upon an *ex parte* application for the purpose, in the manner specified in Order VI.

XXVII. A writ of summons may be sued out and other proceedings may be taken upon a supplemental claim in like manner as upon an original claim.

XXVIII. Guardians *ad litem* to defend may be appointed for infants or persons of weak or unsound mind against whom any writ of summons may have issued under these orders, in like manner as guardians *ad litem* to answer and defend are now appointed in suits on bill filed.

XXIX. Any order or proceeding made or purporting to be made in pursuance of these orders may be discharged, varied, or set aside on motion; and any order for accelerating proceedings may be made by consent.

XXX. Any order of the Master of the Rolls or of any of the Vice-Chancellors may be discharged or varied by the Lord Chancellor on motion.

XXXI. If any of the cases enumerated in Order I. involve or are attended by such special circumstances affecting either the estate or the personal conduct of the defendant as to require special relief, the plaintiff is at liberty to seek his relief by bill as if these orders had not been made.

XXXII. If at any time after these orders come into operation any suit for any of the purposes to which the forms set forth in schedule A. are applicable shall be commenced by bill and

prosecuted to a hearing in the usual course, and upon the hearing it shall appear to the Court that an order to the effect of the decree then made, or an order equally beneficial to the plaintiff, might have been obtained upon a proceeding by summons in the manner authorized by these orders, the Court may order that the increased costs which have been occasioned by the proceeding by bill beyond the amount of costs which would have been sustained in the proceeding by summons shall be borne and paid by the plaintiff.

XXXIII. The Record and Writ Clerks are directed to take the following fees:—

	£.	s.	d.
1. For filing a claim	0	5	0
2. For sealing every writ of summons	0	5	0
3. For filing a caveat	0	2	6
For appearances, office copies, certificates, &c., the same fees as directed by the schedules of fees now in force.			

The registrars are directed to take the following fees:—

	£.	s.	d.
1. For every order on the hearing of a claim, and on further directions	2	0	0
2. For every office copy thereof	0	10	0
3. For every order on arguing exceptions	1	0	0
4. For every office copy thereof	0	5	0
5. For every order for transfer out of Court, or sale of any sum of government stock, &c., exceeding 100 <i>l.</i> stock or annuities, and for every order for payment out of Court of any annuity or annuities, or of any interest or dividends upon stock or annuities, exceeding in the whole 5 <i>l.</i> per annum	1	10	0
6. For every office copy thereof	0	10	0
For every other order and office copy, the same fees as now received by the registrars and their clerks under the schedules of fees now in force.			

Solicitors are entitled to charge and be allowed the following fees:

	£.	s.	d.
For instructions to sue or defend	0	6	8
For instructions for every claim	0	13	4
For preparing and filing a claim	2	2	0
For preparing a writ of summons	0	13	4
For each writ after the first	0	6	8
For engrossing claims and writs, per fol.	0	0	6
For parchment: as paid.			
For each copy of writ to serve, per folio	0	0	4
For the brief to counsel to move for leave to file claim (exclusive of a copy of the claim for counsel and the Court)	0	10	0
For the brief and instructions to counsel, on the hearing (exclusive of any necessary copies)	1	0	0
For taking instructions to appear and for entering appearance:			

For one or more defendants, if not exceeding three	0 13 4
If exceeding three, and not more than six, an additional sum of	0 6 8
If exceeding six, for every number not exceeding three, an additional sum of	0 6 8
For settling minutes, passing and entering order on hearing: The same charge as on a decretal order	
For entering a caveat	0 6 8
For procuring certificate of no caveat	0 6 8
For term fee: As in a suit	

And also all such fees as by the present practice of the Court they are entitled to, save such as are varied or rendered unnecessary by these present orders.

XXXIV. These orders shall come into operation on the twenty-second day of May, 1850.

XXXV. In these orders and the schedules, the following words have the several meanings hereby assigned to them, over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction; viz.

1. Words importing the singular number include the plural number, and words importing the plural number include the singular number.
2. Words importing the masculine gender include females.
3. The word "affidavit" includes "affirmation" and "declaration on honour."
4. The word "person" or "party" includes a body politic or corporate.
5. The word "legacy" includes "an annuity" and a specific as well as a pecuniary legacy.
6. The word "legatee" includes "a person interested in a legacy."
7. The expression "residuary legatee" includes "a person interested in the residue."

METROPOLITAN AND PROVINCIAL LAW ASSOCIATION.

ANNUAL GENERAL MEETING.

In our last number we briefly noticed that the Third Annual Meeting of this active and influential association took place on Wednesday, the 17th inst., in the Hall of Clifford's Inn, J. J. J. Sudlow, in the Chair. The meeting was but thinly attended by the London members, but several leading provincial solicitors were present, especially from Liverpool, Manchester, Leeds, and Hull. After the able and satisfactory report which was read by the secretary, Mr. W. Shaen,—giving an account at some length of the operations of the Society during the past year,—

It was moved by Mr. Moss of Hull, and seconded by Mr. Devey, and resolved,

That the Report of the Committee of Management be received and adopted; and that it

be printed and circulated, either entire or in part, under the direction of the Committee.

It was moved by Mr. C. H. Bower, seconded by Mr. R. Mungam, and resolved,

That the following Members of the Association be elected Members of the Committee of Management for the ensuing year.

Chairman, Mr. James Crossley.

Deputy Chairmen, Mr. E. W. Field and Mr. George Faulkner.

Metropolitan Solicitors.

Mr. C. T. Abbott	Mr. W. S. Cookson
— R. B. Armstrong	— C. Druce
— E. S. Bailey	— H. Gem
— Keith Barnes	— J. S. Gregory
— J. Beaminont	— H. Karslake
— W. Bell	— H. Lake
— G. Bower	— E. Lawrance
— T. H. Bower	— T. Loftes
— J. Burchell	— C. J. Palmer
— E. F. Burton	— W. H. Palmer
— G. Capron	— J. J. J. Sudlow
— E. Chester	— J. Young.
— H. C. Chilton	

Provincial Solicitors.

Mr. J. F. Champney, Beverley
— T. B. Lee, Birmingham
— C. Ingleby, ditto
— J. Nanson, Carlisle
— R. T. Brockman, Folkestone
— J. Burrup, Gloucester
— T. Thompson, Hull
— G. Stamp, ditto
— J. Sharp, Lancaster
— R. Barr, Leeds
— J. Sangster, ditto
— J. H. Shaw, ditto
— T. Avison, Liverpool
— M. D. Lowndes, ditto
— H. H. Statham, ditto
— J. O. Watson, ditto
— P. Wright, ditto
— E. A. Bromehend, Lincoln
— J. Case, Maidstone
— J. Heron, Manchester
— J. Street, ditto
— T. Taylor, ditto
— G. Thorley, ditto
— G. M. Whitlow, ditto
— W. Crighton, Newcastle-upon-Tyne
— J. Peers, Ruthin
— J. Webster, Sheffield
— J. R. Wilson, Stockton
— T. Burn, jun., Sunderland
— G. Beaumont, Warrington
— J. Lewis, Wrexham
— G. Leeman, York
— T. Hodgson, ditto
— G. H. Seymour, ditto.

It was moved by Mr. Crossley, of Manchester, seconded by Mr. T. H. Bower, and resolved,

That the best thanks of the Association be presented to Mr. R. Neate and Mr. E. Benham, for their services as auditors for the past year, and that they be re-elected to the office for the ensuing year.

Mr. *Benham* acknowledged the compliment.

It was moved by Mr. *Beckett*, seconded by Mr. *Donaldson*, and resolved,

That the cordial thanks of the Association be presented to the Committee of Management for their labours during the past year.

Mr. *E. S. Bailey* returned thanks on behalf of the Committee.

It was moved by Mr. *J. O. Watson*, of Liverpool, seconded by Mr. *G. Thorley*, of Manchester, and resolved,

That the best thanks of the Association be presented to Mr. *John Sudlow*, for the way in which he has performed the duties of local Honorary Secretary during the past year.

Mr. *John Sudlow* returned thanks.

It was moved by Mr. *J. Lewis*, of Wrexham, seconded by Mr. *Poole*, and resolved,

That the best thanks of this meeting be presented to Mr. *Sudlow*, for his able conduct in the chair.

Mr. *Sudlow* returned thanks.

The thanks of the Association were also voted to the secretary, and the meeting then separated.

We are happy to see that the balance sheet, which was also laid before the meeting, shows a considerable balance in favour of the society.

LORD DENMAN.

VERSES OF THE POET LAUREATE OF THE HOME CIRCUIT.

At a meeting of the Home Circuit Mess, held at Kingston-upon-Thames, on the 2nd of April, 1850, at which the accompanying verses were recited by the Poet Laureate, it was unanimously resolved that the verses should be printed and a copy sent to each member of the Circuit; and also that a manuscript copy, both of the verses and of this resolution, should be forwarded to Lord Denman.

"His life was noble; and the elements
So mixed in him that Nature might stand up
And say to all the world, *this was a man.*"

JULIUS CÆSAR.

Forgive your Laureate if he fling away
His motley mask, and dares be grave to day,
While to the memory of a great career
He yields a homage feeble, but sincere.

A noble race is ended;—from the noise
Of life's arena to the tranquil joys
Of wise seclusion, glorious with a crown
Of civic worth and dignified renown,
DENMAN retires, and leaves a lofty name
To the sure keeping of historic fame.
Long shall the name of Denman live enshrined
In the fond reverence of the English mind;
Rich as he was in every manly grace
That stamps the sons of England's hero race,
True Saxon worth cast in the stately mould
Of Roman grandeur; stern and lion-souled,
Yet touched by kindlier impulses that move
The hearts, that else had but admired, to love.

England remembers how in manhood's flower,
The bold assailant of all lawless power,
His voice was lifted loudest in the van
Of those who fought against the trade in man;
England has not forgotten how the rush
Of his fierce eloquence rolled forth to crush
The cowardly crew, who, to appease the spleen
Of a king's spite, would immolate a queen;
Nor how, with front erect, he trod the path
Of justice, heedless of a senator's wrath,
And, firm for rights our fathers handed down,
Withstood the House as he had braved the
Crown.

Throned on the seat of judgment, he combined
The purest purpose with the widest mind;
His aim was always justice, his delight
To render law commensurate with right,
And from the breadth of that august domain
Weed the rank growth of quibbling and chicane.
No zealot votary of the cumbrous lore
That "darkened counsel" in the days of yore;
Not blindly worshipping as things divine
The dust and cobwebs of the legal shrine;
But bent to make,—so taught in wisdom's
school,—

Our laws progressive, like the realm they rule.
His proud demeanour and majestic grace
Suited the height of his illustrious place;
Blended extremes in him we could admire,—
Murray's fine ease, and *Chatham's* generous fire;
Calmly sedate and equably polite,
He felt no preference and he showed no slight;
Not prone to talk, but diligent to hear;
Prompt and yet patient; firm but not austere;
Not quick to wrath, but when fit cause arose
To stir his lion nature from repose,—
Some deed of baseness, cruelty, or shame,—
Swift shot the electric impulse through his
frame;

The grave brow lowered; the eye so calm and
cold
Flashed sudden fire, and forth in thunder rolled
The voice whose accents closed with solemn awe
The indignant doom of violated law.

DENMAN, farewell! forgive the attempt to twine
A wreath so worthless for a brow like thine;
But while all others hasten to salute

Thy name with honour, how can we be mute?
We who have known thee long and watched
thee near,

Dispensing justice in our narrower sphere;
Who feel thy loss not more to be deplored
On the grave bench than at the genial board,—
That festive scene where thou did'st love to sit,
Promoting manly mirth and honest wit,
Where not a guest, how'er "unknown to fame,"
But heard thy deep voice pledge him by his
name,

While proudly through our hearts the feeling
ran—

"Others revere the Judge, we love the Man."

Once more farewell! may every blessing wait
On thy retirement to a distant date;
May all the pleasures of a taste refined,
And all the affluence of a well-stored mind,
And all the affections of a loving breast,
Solace thy age, and sanctify thy rest.

RECENT DECISIONS IN THE SUPERIOR COURTS.

AND SHORT NOTES OF CASES.

Master of the Rolls.

Brown v. Lee and others. April 19, 20, 1850.

ADMINISTRATION SUITS.—DISMISSING SECOND SUIT.—COSTS.

The Master having reported that it would be most advantageous to the infants to prosecute the first of two administration suits—on petition to dismiss the second, which was filed by the solicitor and next friend, and to confirm the Master's report—the petition was dismissed; but, as it had been properly instituted and would have been rendered unnecessary by the conduct of the trustees, it was dismissed without costs.

THIS was a petition by two of the defendants, James H. Lee and Charles Lee, to dismiss, with costs, a second suit instituted for the administration of the estate of James Lee, who, by his will, dated 14th Feb., 1834, bequeathed all his real and personal estates to trustees in trust to his wife for life, and at her death to his two sons, the present petitioners, and his daughter, the wife of Benjamin Brown, share and share alike. Upon the testator's death, a suit was instituted at the request of the widow by Mr. Adam Rivers Steele for the administration of the estate and payment into Court of the moneys in their hands. It appeared the trustees had sold out the consols in which the moneys originally were invested and advanced it on a mortgage security, and had, upon the mortgage being paid off, placed them at a banker's at 2½ interest per cent. Upon the change of solicitors from Mr. Steele to Mr. Robson in the conduct of the suit, Mr. Steele, having, as he alleged, cause to fear the infant's interests would be endangered, pressed the trustees to pay the money into Court and for an answer to the bill, threatening, if this were not done, to file another bill himself. He accordingly instituted a second suit as next friend and solicitor of the infant, whereupon one of the defendants in the first suit put in an answer and the money was paid into Court. A reference was then directed to inquire which of the suits it was most for the infant's benefit to prosecute, and the Master having reported in favour of the first, Mr. Steele excepted to such report, and the Messrs. Lee presented their petition to confirm the report and to dismiss the second suit with costs to be paid by Mr. Steele.

Cooper and Wright for the plaintiffs in the first suit; *Roupeell and Fooks* for Messrs. Lees; *Turner and Elderton* for Mr. Steele.

The Master of the Rolls said, that *prima facie* upon the Master's report the second suit should be dismissed with costs, but upon looking into the circumstances of the case, it was clear the trustees had committed a breach of trust, and the new solicitor employed by the adult plaintiffs had not communicated with

Mr. Steele, which might have obviated the necessity of filing the second bill. But as Mr. Steele had acted quite regularly in the proceedings, his bill would be dismissed without costs.

April 17.—*Carlisle v. South Eastern Railway Company*—Injunction to restrain payment of dividends on shares until branch line opened for traffic, with leave to move.

—18.—*In re Elmstie, ex parte Knill*—On petition, order for taxation of bill of costs.

—17, 19.—*Munt v. Shrewsbury and Chester Railway Company*—Order by consent.

—23.—*Robertson v. Skelton*—Order for resale of property, and purchaser who had failed to complete to be liable for any deficiency.

—23.—*Re Walsh*—Cur. ad. vult.

—23.—*In re Joseph's Trusts*—Order for payment out of Court of money paid in under the 10 & 11 Vict. c. 96.

Vice-Chancellor of England.

Dagleish and another v. Jarvie. April 17, 1850.

INJUNCTION.—COPYRIGHT IN DESIGNS.—ORIGINAL BILL.—SUPPRESSIO VERI.—AMENDED BILL.—COSTS.

Where plaintiffs omitted, in their bill to restrain the publication of a design on calico, to state the fact of such design having been exhibited two months before its registration under the 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65, and amended after answer and injunction obtained ex parte, stating such circumstance, the injunction was dissolved with costs.

THIS was a motion to dissolve an *ex parte* injunction restraining the defendant from applying a certain design, or any fraudulent imitation thereof, in ornamenting calico or woven fabric for the purpose of selling the same. The plaintiffs were calico printers at Manchester, and alleged in their bill that one Leopold Bernheim, a designer in their employ, had invented on their behalf the design in question, which they registered on Dec. 9, 1848, and before the publication thereof, under the 5 & 6 Vict. c. 100, and 6 & 7 Vict. c. 65; that defendant being in their employ and knowing this fact, in July last exposed for sale printed calicos with fraudulent imitations of their design. By the defendant's answer, it appeared that the design had been exhibited by the plaintiffs for the purpose of obtaining orders two months before it was registered. The plaintiffs then amended their bill, stating this fact and changing that the publication had not taken place until the design was applied to the fabric.

Bethell and Prendergast in support of the motion; *Rolt and Daniel* contra.

The Vice-Chancellor said, that if the fact of exhibition had been stated in the bill originally, notice of motion for the injunction would

have been directed. They had, however, only brought these facts forward by amendment after the defendant's answer, and the injunction had been obtained *ex parte*, and they must therefore take the consequences of such omission; and the injunction was dissolved with costs.

April 17.—*M'Intosh v. Morris*—Injunction dissolved with costs.

— 18.—*Norman v. Hammack*—Judgment on construction of deed of indemnity.

— 22.—*Waters v. Mian*—Order for account—Costs reserved.

— 22.—*Benecke v. Allen*—Injunction *ex parte* to restrain alleged pirating designs on calicoes.

— 23.—*King of the Two Sicilies v. Oriental and Peninsular Steam Packet Company*—Part heard.

Vice-Chancellor Knight Bruce.

Anon. April 17, 1850.

PETITION TO ANNUL FIAT.—PETITIONING CREDITOR.—PAYMENT OF DEBT.

A petition to annul a fiat was directed to stand over to complete the requisite proceedings, and the petitioning creditor was directed to prove before the Commissioner, upon the petitioner depositing with the official assignee a sum to meet his debt and of any others proved before the Commissioner—payment to be made in two days afterwards.

THIS was an application to annul the fiat. It appeared from the petitioner's allegations that his debts did not exceed 600*l.*, and that he was in possession of property of the value of 4,000*l.* The petitioning creditor's debt was 76*l.*

Swanston and Chandless, in support, said the petitioner was willing to deposit with the official assignee sufficient to pay the petitioning creditor, if found due by the Commissioner, together with such other debts as might be proved.

Russell and Simons for the petitioning creditor.

The Vice-Chancellor said, the creditor might establish his claim before the Commissioner, payment to be made within two days, and the petitioner to be bound by the Commissioner's decision; but the creditor to be at liberty to dispute it if so advised. The petition was directed to stand over for a fortnight to complete the requisite proceedings for annulling the adjudication on the fiat. *In re Ogilby*, 1 G. & J. 250.

April 17.—*Esparte Chamberlayne, in re Ward*—Stand over.

— 18.—*Esparte Hardy, in re Briggs*—Order under 12 & 13 Vict. c. 106, s. 130, for appointment of trustee, and reference as to that of two others.

April 19.—*Esparte Sturges, in re Kernot*—Special case allowed for appeal under the 12 & 13 Vict. c. 106.

— 20.—*In re Madrid and Valencia Railway Company*—Stand over.

— 20.—*In re London Junction Railway Co.*—Order for dissolution and winding up.

— 20.—*In re Cheltenham, Oxford and London Junction Railway Company*—Order for winding up.

— 20.—*In re Great Munster Railway Co.*—Stand over.

— 20.—*In re London and Norwich Railway Company*—Stand over.

— 22.—*Harrison v. Armistead*—Part heard.

— 23.—*Ogle v. Morgan*—Cur. ad. vult.

— 23.—*Lee v. Delane*—Part heard.

Vice-Chancellor Wigram.

April 17, 18.—*Enderwick v. Snell*—Cur. ad. vult.

— 20.—*Attorney-General v. Rivas*—Leave to widow of minister of French church in London to go before Master to claim as object of charity fund.

— 20, 22.—*Sharpe v. Taylor*—Cur. ad. vult.

— 22, 23.—*Attorney-General v. Cooper*—Demurrer overruled.

— 23.—*Dickinson v. Mort*—Power to charge an estate with portion for daughter in case of marriage, held well executed by appointment to daughter for life for her separate use, with clause against anticipation, and at her death to her children.

Queen's Bench.

Davis v. Williams and others. April 17, 1850.

ACTION ON THE CASE.—PULLING DOWN DWELLING-HOUSE.—NEW TRIAL.—REJECTION OF EVIDENCE.—MISDIRECTION.

In an action of trespass for breaking down the walls of a house built on part of the waste whilst the plaintiff was occupying it, a notice was held to have been properly rejected which was served by the defendants, the commoners, of their intention to pull down the house; and that it was sufficient for the judge to put the question to the jury whether the house was the plaintiff's dwelling-house, without asking whether his occupation was bona fide or merely colourable.

THIS was an action in trespass for breaking and entering the plaintiff's house whilst he was occupying it, and demolishing the same. It appeared at the trial at the last assizes at Cardigan, before Mr. Justice Williams, that Thomas Thomas had built the house upon part of the waste about 10 years since, and had afterwards sold it to one Marsden, who had placed the plaintiff in it. A verdict was found for the plaintiff on four of the issues and for the defendant on the rest.

H. Jones, S. L., moved for a new trial on the ground that the learned judge had improperly rejected a notice served by the defendants who,

were commoners, of their intention to pull down the house in question; and that a question ought to have been put to the jury whether the plaintiff's occupation was *bona fide* or only colourable.

The Court held the evidence was properly rejected, and that, as the judge had asked the jury whether the house was the plaintiff's dwelling-house, there was no misdirection—and refused the rule.

April 17.—*Bishop v. Cook and others*—Rule nisi to set aside nonsuit and for new trial.

— 17.—*Same v. Same*—Cur. ad. vult.

— 17.—*Davis v. Williams and others*—Cur. ad. vult.

— 18.—*Mayor, &c., of Rochester v. Lee*—Rule nisi for new trial on the ground of misdirection.

— 18.—*Staines and uxor v. Eastern Union and Hadley Junction Railway Company*—Rule nisi for new trial on the ground of verdict being against evidence.

— 19.—*Bottomley v. Smith*—Rule nisi to set aside verdict and for new trial.

— 19.—*Noden v. Johnson and another*—Rule nisi to set aside verdict and for new trial.

— 20.—*Shoreham Harbour Commissioners' Treasurer v. West*—Cur. ad. vult.

— 22.—*Lefevre v. Chappell*—Cur. ad. vult.

— 22.—*Hoskins v. Maddox*—Rule nisi for new trial, unless plaintiff reduced damages by 10*l*.

— 23.—*Hartnell and another v. Fox*—Rule refused to set aside verdict and for new trial.

— 23.—*Bright v. M'Clean*—Cur. ad. vult.

Queen's Bench Practice Court.

April 17.—*Regina v. Trustees of Grosvenor District Roads*—Certiorari to remove indictment on one of trustees entering into his own recognizance for 100*l*. and two sureties for 100*l*. each.

— 18.—*M'Kenzie v. Sligo and Shannon Railway Company*—Rule nisi to set aside or stay proceedings under the 11 & 12 Vict. c. 45, and 12 & 13 Vict. c. 108, cause to be shown in full Court.

— 19.—*In re Cutts*—Rule nisi on attorney to pay over moneys.

— 20.—*Creese v. Atlas Insurance Company*—Rule nisi on arbitrators and attorneys to make deed of submission to award a rule of Court.

— 20.—*Regina v. Magistrates of Kingston, Hereford*—Rule nisi on justices for mandamus to deliver up depositions.

— 22.—*In re Halifax Town Clerk*—Rule nisi to bring up order of town council.

Common Pleas.

Bowles v. Claxton. April 18, 1850.

ACTION ON MARINE POLICY OF INSURANCE.

— DELIVERY TO CONSIGNEE AT END OF VOYAGE.—MISDIRECTION.

A vessel, whose cargo was insured from Liver-

pool to China, sustained some injuries at the Cape, whereby the cargo was damaged, and upon her arrival at Hong Kong trans-shipped the cargo on board another vessel, which was wrecked and the cargo lost. In an action on the policy, held, that the jury had been properly directed to find for the defendant, if they were of opinion the delivery was a delivery to the consignee at the end of the voyage, and for the plaintiff, if only for the purpose of being examined.

THIS was an action on a policy of assurance upon the cargo of the ship Penang, from Liverpool to China. The vessel left Liverpool on November 1, and off the Cape of Good Hope met with very bad weather, and part of the cargo was damaged, and she was obliged to put in at Singapore to repair. On her arrival at Hong Kong, the cargo was trans-shipped into the *James Lang*, which was driven from her moorings during a hurricane, and the cargo was lost. The underwriter of the policy having refused to pay the amount insured, on the ground that the risk had terminated upon the trans-shipment of the cargo on board the *James Lang*, this action was brought. At the trial in London at the Nisi Prius Sittings after Hilary Term last, the L. C. J. Wilde directed the jury, that if they considered the trans-shipment was a delivery to the consignee at the end of the voyage, they would find for the defendant, or for the plaintiff, if they were of opinion that it was only for the purpose of examining the goods in order to ascertain the damage. A verdict having been found for the defendant, this motion was made to set aside the verdict and for a new trial on the ground of misdirection.

The Attorney-General in support.

The Court held, that the question had been properly put to the jury, and refused the rule.

April 17.—*Barrow v. Manchester and Sheffield Railway Company and others*—Rule nisi to enter verdict for defendants or for new trial on the ground of misdirection.

— 17.—*Spartali v. Benecke*—Rule nisi to enter verdict for plaintiff, or for new trial, on the ground of misdirection.

— 18.—*Regina v. Sheriff of Leicester, Arden v. Bingham*—Rule nisi to stay proceedings.

— 18.—*Somers v. London and North Western Railway Company*—Rule nisi to set aside verdict on ground of absence of witness.

— 18.—*Elvies v. Croft*—Rule nisi to enter verdict for defendant on second issue.

— 19.—*Kempton v. Willy*—Rule nisi for prohibition to County Court judge.

— 20.—*Electric Telegraph Company v. Brett and another*—Rule nisi on leave reserved to enter a nonsuit.

— 20.—*White v. Jolly*—Rule absolute, without costs, for new trial on the ground of perverse verdict.

— 22.—*Smith v. Hamilton*—Rule discharged for new trial.

— 23.—*Orchard v. Rackstraw*—Rule re-

fused for new trial on the ground of misdirection.

April 23.—*Green v. Arundel*—Rule refused for prohibition to restrain 2nd action in County Court, although the first had been removed by certiorari and discontinued.

—23.—*McLean v. Leeming*—Rule absolute for new trial on payment of costs.

—23.—*Hawkins v. Alnan*—Rule refused to stay proceedings in action for 3l. 15s., on payment of debt, without costs.

Court at Echequer.

Chambers v. Jones and another. April 19, 1850.

ATTORNEY.—BILL OF COSTS INCURRED IN PROCEEDINGS TO REMOVE PAUPER.—LIABILITY OF CHURCHWARDENS.

Seemle, the churchwardens of a parish at the time instructions were given to the solicitor to take proceedings to remove a pauper, are the parties liable for the costs thereby incurred, and not the churchwardens for the time being.

Townsend moved, pursuant to leave reserved, for a rule nisi to set aside the nonsuit and to enter the verdict for the plaintiff with damages as in the declaration, in an action brought to recover the amount of an attorney's bill of costs incurred in the proceedings for the removal of a pauper. It appeared at the trial before Mr. Justice Cresswell at the Spring Assizes for the county of Flint, that the in-

structions were given by the churchwardens of the removing parish, but that before the proceedings terminated they retired from office and the present defendants succeeded. A nonsuit having been entered on the ground that the then present churchwardens were not liable, this motion was made.

The Court said, the retiring officers, and not the present defendants, were the parties liable, and refused the rule.

April 17.—*Burtinshaw v. Oxford and Birmingham Railway Company*—Rule nisi to enter verdict for defendants.

—18.—*Rigby v. Hewitt*—Cur. ad. vult.

—18.—*Jowett v. Etwall*—Cur. ad. vult.

—19.—*Ambergate and Nottingham Railway Company v. Coulthard*—Rule nisi on leave reserved to reduce verdict.

—19.—*Same v. Mitchell*—Rule nisi to reduce verdict.

—19.—*South Staffordshire Railway Company v. Burnside*—Rule nisi to enter verdict for defendant.

—20.—*Newbold v. Coltman and others*—Rule nisi to enter verdict for defendants, or for nonsuit or for new trial, on the ground of misdirection.

—22.—*Adams v. Minn*—Cur. ad. vult.

—23.—*O'Connor v. Bradshaw*—Cur. ad. vult.

—23.—*Parry v. Davis and wife*—Rule refused to increase amount of verdict, on leave reserved.

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